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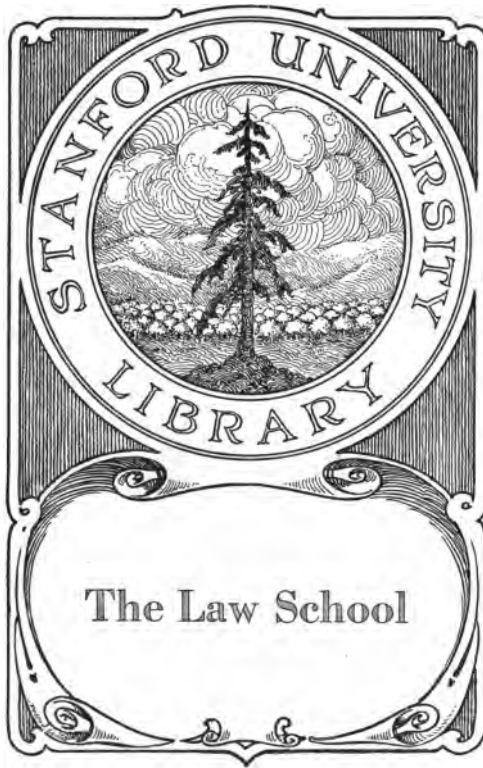
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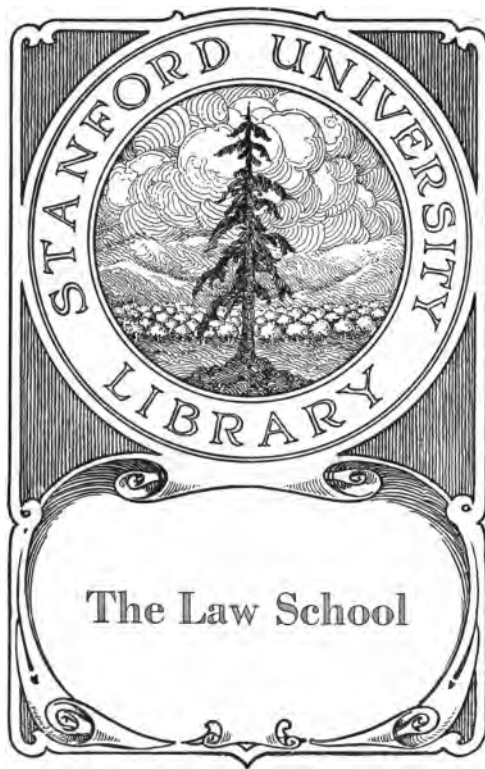
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ALBERT ARBITRATION.

LORD CAIRNS'S DECISIONS.

8748

REPORTED BY
FRANCIS S. REILLY,
OF LINCOLN'S INN, ESQ., BARRISTER-AT-LAW.

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NINETY PER CENT. OF THE TOTAL PROFITS DIVIDED AMONG THE ASSURED.

REVENUE ACCOUNT FOR THE YEAR ENDING DECEMBER 31, 1871.

	£	s.	d.
Amount of Funds at the beginning of the year as per last Account	793,054	9	5
New Annual Premiums	12,057	11	2
Less Reassured	1,686	2	4
Single Premiums	645	3	1
Less Reassured	5	0	0
Renewal Premiums	96,748	16	10
Less Reassured	11,006	11	3
Interest and Dividends	35,629	8	10
Fines, Fees, &c.	90	15	9
Cash Bonus on Reassurances	2,548	8	0
Consideration for Annuities granted	5,888	12	10
	£933,965	12	4

	£	s.	d.
Claims under Policies	27,501	19	0
Less Reassured	6,500	0	0
Surrenders	31,001	19	0
Annuities	3,787	12	0
Commission	5,082	8	5
Less Commission on Reassurances	722	1	11
Expenses of Management	4,360	6	6
Rent of Temporary Premises	5,725	8	1
Proprietors' Dividends	407	12	9
Bonus in Cash	6,000	0	0
Income Tax	51	0	0
Written off the Cost of the Society's House	575	15	4
Amount of the Funds at the end of the year	1,832	4	3
	875,785	2	5
	£933,965	12	4

BALANCE SHEET, DECEMBER 31, 1871.

LIABILITIES.		£	s.	d.
Shareholders' Capital, paid up	60,000	0	0	0
Assurance Fund	515,785	2	5	
Total Funds, as per Revenue Account	575,785	2	5	
Claims admitted but not paid	357	0	0	
Proprietors' Dividends due	6,339	12	6	
Annuities due and unpaid	258	13	2	
Other Sums due and unpaid	49	12	1	

ASSETS.		£	s.	d.
Mortgages	575,959	1	0	
Bonus on the Society's Policies	13,512	8	6	
Investments—				
In British Government Securities	18,365	12	6	
Bank Stock	7,242	9	2	
Bombay and Baroda Railway Stock	11,233	7	8	
Russian Bonds	2,760	12	6	
Freehold Houses, 17 and 18, Lincoln's Inn Fields, in course of rebuilding—				
Balance of Cost	18,000	0	0	
Reversions	118,940	18	6	
Life Interests	56,453	0	2	
Loans upon Personal Security	26,036	11	8	
Outstanding Premiums	7,328	12	2	
Ditto Interest	3,509	9	4	
Cash at London and Westminster Bank on Deposit	216,000	0	0	
Ditto ditto on Current Account	7,447	17	0	
	23,447	17	0	

£933,965 12 4

£933,965 12 4

ALBERT ARBITRATION.

LORD CAIRNS'S DECISIONS.

LEE'S CASE.

List of Contributories.

1871
June 1.

Where a person whose name stood in the share register book of a company in liquidation applied to have his name removed from the list of contributories, on the ground that on an amalgamation the amount paid on his shares had been paid back to him by the transferee company, and his share certificates had been delivered over to that company, the payment purporting, under the amalgamation agreement, to be by way of satisfaction and in extinction of his shares :

Held, that, notwithstanding what had been done on the amalgamation, his name must remain on the list.

THIS was an application (which had been pending in the Court of Chancery on an adjourned summons) for removal of Mr. *Lee's* name from the list of contributories of the *Family Endowment*.

At the date of the amalgamation of the *Family Endowment* with the *Albert* Mr. *Lee* held, and was entered in the share register book as holding, 200 shares in the *Family Endowment*, £4 a share being paid thereon, as on all the other shares in the society. He had executed the deed of settlement as one of the original shareholders. The amalgamation agreement stipulated that the *Albert* should pay to each shareholder in the *Family Endowment* £4 a share by way of satisfaction and in extinction of his shares. Mr. *Lee* received the £4 a share for his shares, and gave up his share certificates to the *Albert*. The books of the *Family Endowment*, including the minute book and share register book, were, previously to the payment of the £4 per share, delivered over to and were thenceforth retained by the *Albert*. No alteration was made in the

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LEE'S CASE. share register book in consequence of the amalgamation. Mr. *Lee* was settled on the list of contributories for 200 shares.

Mr. *Kekewich* was for Mr. *Lee*.

Mr. *Eddis*, Q.C., (Mr. *Rodwell* with him) was for the *Family Endowment*.

Mr. *Kekewich* :—It is not contended by Mr. *Lee* that there has been a dissolution of the *Family Endowment* within the deed. The Court of Chancery has decided the contrary, and ordered the winding-up. Nor does he say that a deed of transfer has been executed by him, or that a deed of acceptance has been executed by any transferee from him, in the respective form required by the deed, or in any similar form. But, as he could not, after this transaction, have claimed any benefit from the *Family Endowment*, so, he contends, that society cannot now say that he is bound to contribute for payment of their debts. If any deed or any entry in the books was necessary, it was the duty of the *Albert* directors to see it made.

LORD CAIRNS :—In the case of the *Family Endowment*, suppose a person whose name was on the register of shareholders had agreed to sell his shares to a purchaser, and suppose no change made in the register, no deed of transfer executed, no deed of acceptance executed, but a binding contract to sell and to buy : in that state of things, without more, would or would not the person remaining on the register have been liable at law to the debts of the society ?

Mr. *Kekewich* :—He would.

LORD CAIRNS :—Then, apart from any question about dissolution, does the case differ from what it would have been if, instead of dealing with the *Albert*, Mr. *Lee* had dealt with some person in the market ?

Mr. *Kekewich* :—Yes ; on the ground that the *Albert* really put themselves in the place of the *Family Endowment*, taking the business, taking the certificates.

LORD CAIRNS:—It may be that the *Albert* were also liable. LEE'S CASE.
Would that absolve a person who was on the register from his pre-existing liability?

Mr. *Kekewich*:—I am submitting that is so—that the *Albert*, having all the means of doing that which Mr. *Lee* could not do, and having paid him off, were bound to place themselves in his position.

LORD CAIRNS:—That may be, and he may have a remedy against them for not performing that which was their duty; but that is quite consistent with his remaining on the list of contributories.

Mr. *Kekewich*:—The *Albert* should be made primarily liable, if only to work out the rights of the parties without circuity. Mr. *Lee* is a contributory only after the *Albert* contributories are exhausted, and after it has been ascertained that they are not able to perform the contract of the *Albert* to indemnify the shareholders of the *Family Endowment*. He mentioned

Oakes v. Turquand, L. R. 2 H. L. 325;

and referred to clauses 104 to 107, 122, 163 to 169, 173, 174 of the *Family Endowment* deed.

Mr. *Eddis* was not called on.

LORD CAIRNS:—The case has been argued with great force and ability by Mr. *Kekewich*, but it is too clear to admit of any doubt, and in my opinion Mr. *Lee* must remain on the list of contributories. His case may be looked at in two ways.

First, he may claim not to be on the list on the ground that there has been what is termed in one of the resolutions an extinction of his shares. That could only be brought about by an accurate pursuit of the provisions in the deed. But those provisions contemplated that which was equivalent to an extinction of the shares, namely, a dissolution of the society, only on the hypothesis that provision had been made for all claims that might be made on the society. And until that was done, till the claims were paid, or something was done equivalent to payment of the

LEE'S CASE. claims, the time for extinction of the shares and dissolution of the society would not arrive. In that view of the case, therefore, his claim to be removed from the list of contributories has failed.

The only other light in which he could assert his claim is that in equity the shares have become the property of the *Albert*, and have ceased to be his; and that certain duties devolved on the *Albert* to complete the documents that would have removed his name from the list and substituted another name for his. It appears to me that his case cannot be put higher in that point of view, than if he had sold his shares in the market to a purchaser; the result of which contract would have been that in equity he would have been merely a trustee of the shares for the purchaser, and the purchaser would in equity have been the owner of the shares, and Mr. *Lee* could no longer have claimed, for his own benefit, any interest in the profits or trading of the society. But in that case, until the time arrived when Mr. *Lee's* name was removed from the list of shareholders, he would, both by the words of section 200 of the *Companies Act*, 1862, and by the provisions of the *Family Endowment* deed itself, remain the person answerable for the shares. It is possible that he may have rights over against the purchaser; but those rights, whatever they may be, are perfectly consistent with his remaining liable in the first instance to whatever claim may properly be made against the society.

My opinion therefore is that Mr. *Lee's* name must remain on the list of contributories.

Solicitors for Mr. *Lee*: Messrs. *Freshfield*.

Solicitors for *Family Endowment*: Messrs. *Markby & Tarry*.

KENNEDY'S CASE.

Policy—Novation.

1871

June 1, 15.

Novation consequent on amalgamation established, in the circumstances, against a policy-holder, who, having on the amalgamation received from his assuring company, the transferors, a circular holding out to their policy-holders advantages to be derived by them from acceptance of the liability of the transferee company, thenceforth paid his premiums to the transferee company, and took receipts of that company, he not shewing that the premiums were paid to and received by that company as agents of his assuring company.

Observations on novation.

Observations on character of contract of life assurance.

THIS was a claim by *Mr. Kennedy* (which had been pending in the Court of Chancery on an adjourned summons) to prove against the *Family Endowment* on a policy issued to him by that society on his own life, for £600, dated 12 September, 1844.

The *Family Endowment* policy had not been exchanged for an *Albert* policy, nor had it been indorsed with an admission of the liability of the *Albert*.

Mr. *Westlake* was for Mr. *Kennedy*.

June 1.

Mr. *Eddis*, Q.C., (Mr. *Rodwell* with him) was for the *Family Endowment*.

Mr. *Westlake* contended that in the circumstances there was no novation. He mentioned

Bartlett's Case, L. R. 5 Ch. 640;

Griffith's Case, L. R. 6 Ch. 374.

LORD CAIRNS:—In *Griffith's Case* there were two special circumstances. One was that the policy-holder declined expressly to sign an admission of the transfer of liability when it was proffered to him; the other was that the deed of amalgamation, or transfer, or whatever it may be, between the *Albert* and the *Medical* contained an express clause authorizing the *Albert* to go on receiving premiums as agents for the *Medical* where any one was unwilling to accept a substituted policy in the *Albert*. Then suppose the

KENNEDY'S
CASE.

proper question to be considered is, in what sense did the policy-holder pay, and in what sense did the *Albert* receive, the renewal premiums: with regard to the sense in which the policy-holder paid, the circumstance that he refused to sign the admission is material; with regard to the sense in which the *Albert* received, the circumstance that the *Albert* were authorized to receive as agents for the assuring company is material.

Mr. *Westlake* also mentioned

King v. Accumulative Company, 3 C. B., N. S., 151;
Pott's Case, L. R. 5 Ch. 118.

LORD CAIRNS:—*Pott's Case* was the case of an annuitant, which is widely different from the case of a policy-holder.

Mr. *Westlake*:—The words of the circular are the same as regards both annuitants and policy-holders.

LORD CAIRNS:—As to an annuitant, it is little matter what such a document says, because, unless he consents by some act as high as his original contract, his right is untouched.

Mr. *Westlake*:—I submit that, as between the annuitant and the policy-holder, there is no difference with respect to the form of novation.

LORD CAIRNS:—With regard to a policy-holder is it a case of novation at all? Is that a proper term to use? I do not object to a word if we understand the same thing; but is the case of a policy-holder the case of a novation? The case of a novation is the case of an existing contract with *A.*, a proposal to change that contract before it is broken and make it a contract with *B.*, and then by a tripartite arrangement between *A.* and *B.* and the contract-holder an agreement to that effect come to. But is not the case of a policy-holder, who comes to prove, a case of this sort? The first step in his case is to show that he has paid to the proper party the premium which is to be the condition of the continuance of the policy. He comes forward and produces a receipt not from the party named in the policy, but from somebody else, somebody quite different. It may very well be that that person may turn out to be the agent of the person to whom the premiums

ought to be paid ; but does it not lie on the person who produces a receipt from a different person to show that he paid to the different person as the agent, and that the different person received as the agent, of the person or of the company to whom the payment was to be made? In other words, is it not a question whether you show that as to the old company your contract is in existence at all ; whether you have done the thing that would have kept it in existence ?

KENNEDY'S
CASE.

Mr. *Eddis* was not called on.

Judgment reserved.

LORD CAIRNS :—In this case the contract is in the usual form. The policy witnesses that in consideration of the sum of £17 9s. now paid by Mr. *Kennedy* to the directors of the society, and in case Mr. *Kennedy* shall on 6 September in every succeeding year during his life pay to the directors of the society for the time being the premium of £17 9s., the funds of the society shall be liable, according to the provisions of the deed of settlement of the society, to the payment of the sum of £600 to the executors, administrators, or assigns, of Mr. *Kennedy*, on his death, and so forth.

June 15.

The character of the contract of life assurance is somewhat peculiar. The premium having been paid on a policy of this kind for one year, during the course of that year nothing more remains to be done, on the side either of the assurer or of the assured. The assured may remain quiescent during the year. If he dies during the year, the liability of the assuring company, without more, arises ; and the sum assured must be paid by the company to his executors. But after that year is at an end the state of things is altered. It is entirely optional to the assured whether or not he will pay any further premium. He may if he pleases let the policy drop, and the company have no means of compelling him to pay the premium. On the other hand, he may renew or continue the assurance ; but in order to do this he must perform that which is pointed out in the policy as the condition precedent, namely,—he must pay to the directors of the society for the time being the premium mentioned on the face of his policy.

KENNEDY'S
CASE.

In this case the premiums were paid by Mr. *Kennedy* to the directors of the *Family Endowment* up to 1861. In February and March, 1861, the *Family Endowment* and the *Albert* made a contract of amalgamation. I use the term amalgamation, because it has been so frequently used in these cases, without pledging myself to the correctness of the expression, or saying that it describes in the most felicitous way the nature of the contract; but every one knows what is intended by it in these cases. On 16 March, 1861, the *Family Endowment* sent to Mr. *Kennedy* the circular announcing the fact of the amalgamation.

It appears to me that nothing can be clearer than the meaning of this circular; no person of ordinary understanding could fail to apprehend exactly what it proposes. It proposes to give policy-holders in the *Family Endowment* advantages greater than those which they already possessed, consequential on their becoming insured in the *Albert*. They will have the chance of a better bonus; they will have the security of a larger capital; the business of the two companies will be managed more economically. If they wish, their policies will be indorsed or new policies will be given; that is a mere matter of form. They are told the consequence will be the same if they remain with their policies undisturbed; they will in all respects be treated as if the policies had been issued originally by the *Albert* on the day they bear date. But this promise that the *Albert* would undertake the liability, and that these benefits would accrue, is made conditional on this,—on payment to the *Albert* of the premiums payable under the policies of or contracts with the *Family Endowment*.

That was a clear and intelligible offer to the policy-holders in the *Family Endowment*. They were not obliged to accept it, they might have taken steps (as in *Wood's Case*, before me) to maintain their position as persons insured in the *Family Endowment*, and to repudiate any proposal of a change such as was made to them by this circular. Mr. *Kennedy* in no respect repudiated the offer made. He paid his premiums afterwards becoming due, not to the *Family Endowment*, but to the *Albert*.

The difference in the form of the receipts is remarkable. The form of receipt on 7 September, 1860, next before the amalgamation, was that of an ordinary receipt delivered out by the *Family Endow-*

ment, headed by their name, and signed by two of their directors. On 12 September, 1861, on the first payment of premium after the receipt of the circular, the receipt taken by Mr. Kennedy is headed *The Albert Medical and Family Endowment Life Assurance Company*, at a different office, *Waterloo Place*, in place of *New Bridge Street*, and is thus :

KENNEDY'S
CASE.

Received the sum of £17 9s., being the yearly premium from the 6th day of September, 1861, for an insurance of £600 under policy No. 964, issued on the life of *Thomas Kennedy*.

It is signed by two directors of the *Albert*, and countersigned by the cashier, with this statement, that no receipt is valid unless signed by two of the directors and countersigned by the company's cashier, or by an agent, the company being the only company spoken of, namely, the *Albert*. In 1862 the receipt is a little different in form. In the body of the receipt it is stated that the premium is received for renewal of the policy mentioned in the margin thereof, the amount of which premium, and the period for which it is received, are also (it is stated) mentioned in the margin. It is signed by two directors and countersigned by the accountant of the *Albert*, and bears in the margin 'Life receipt F. E. Policy No. 964', sum assured so much, premium so much. The subsequent receipts are of the same kind ; those given in and after 1864 being headed *Albert Life Assurance Company*, simply. These receipts are clearly receipts of the *Albert* ; they offer the discharge as coming from the *Albert* ; they refer to the policy by its original number, and in order to identify it, they add the letters F. E., to shew that it was originally a *Family Endowment* policy.

If these receipts stood alone, it would be open to the person producing them to show that, although they profess to be receipts of the *Albert*, the money was paid to the *Albert* on some footing that would make the *Albert* the agents of the *Family Endowment* for the purpose of receiving premiums, so as to continue the liability of the *Family Endowment*. But it appears to me that the burden of explaining the apparent irregularity of the receipts, the apparent variance, the open variance, between the payments stated in the receipts and the payments contemplated by the policy, lies on the person who produces these receipts. Far from offering any explanation, Mr. *Kennedy* is obliged to confess that there passed before

KENNEDY'S
CASE.

the payments, which are evidenced by these receipts, that transaction to which I have referred, namely, the sending to him and the receipt by him of this circular. It appears to me that, this circular containing an offer, and on the face of it stating that payment of premiums to the *Albert* would be proofs (as it were) of the acceptance of the offer, the moment a premium was paid in the manner invited by the circular, the contract became complete between Mr. *Kennedy* and the *Albert* on the one hand, and the termination on the other hand of the liability of the *Family Endowment* became complete for want of any payment of premium to them.

In these circumstances it appears to me that the liability of the *Family Endowment* is at an end. The policy is absolutely unrenewed with the *Family Endowment*, and an equitable contract for a new policy on the same terms arises with the *Albert*, which subsequently received the premiums.

I think, therefore, that Mr. *Kennedy's* claim as against the *Family Endowment* fails; he must rank as a policy-holder in the *Albert*.

As his case has been chosen as a representative case, his costs will be provided for.

Solicitors for Mr. *Kennedy*: Messrs. *Kennedy & Kempson*.

Solicitors for *Family Endowment*: Messrs. *Markby & Tarry*.

DALE'S CASE.

*Annuity—Novation.*1871
June 2, 15.

Novation consequent on amalgamation established, in the circumstances, against an annuitant, who, having on the amalgamation received from his assuring company, the transferors, a circular describing the amalgamation arrangement, had his annuity contract indorsed by the transferee company with a certificate of the liability of that company to pay the annuity under the contract, and received the subsequent payments of his annuity from that company.

Pott's Case distinguished.

THIS was an application (which had been pending in the Court of Chancery on an adjourned summons) by Mr. *Dale* to be admitted as a creditor of the *Metropolitan Counties* on an annuity contract.

Mr. *C. E. Lewis* (solicitor) was for Mr. *Dale*.

June 2.

Mr. *Higgins* was for the *Metropolitan Counties*.

Mr. *C. E. Lewis* mentioned

Pott's Case, L. R. 5 Ch. 118.

Mr. *Higgins* contended there was a novation by the claimant with the *Albert*.

Judgment reserved.

LORD CAIRNS:—This case arises on a claim against the *Metropolitan Counties* on an annuity contract.

June 15.

The contract was issued to Mr. *Dale*, who is described as a house servant, by the *St. George Company*, in consideration of a single payment. The *St. George Company* amalgamated with the *Metropolitan Counties* in October, 1861, and at that time there was a printed indorsement put on the annuity contract in these words:

In consideration of the within-named assured having agreed to the transfer of the within-written policy to the *Metropolitan Counties* [&c.], and to pay to the said society all future premiums on the same policy as they become due, and to observe and perform all the stipulations contained in the said policy on the part of the said assured, the said society doth hereby agree to observe and perform all the stipulations contained in the same policy on the part of the *St. George* [&c.], and in the stead of the said *St. George* [&c.].

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CASE.

The annuity contract seems to have been sent in by Mr. *Dale* to the *Metropolitan Counties*, and this printed indorsement seems to have been pasted on the back of the contract by the directors of the *Metropolitan Counties*. The claimant therefore comes here admitting that, as between the *St. George* and the *Metropolitan Counties*, by force of this indorsement, the liability of the *St. George* terminated, and that he accepted in lieu of it the liability of the *Metropolitan Counties* at the time this indorsement was made.

The *Metropolitan Counties* amalgamated with the *Western* in 1862, and the *Western* with the *Albert* in June, 1865. No question arises here as to the liability of the *Western*, the intermediate company. The question is as between the liability of the *Metropolitan Counties* and the liability of the *Albert*.

On the amalgamation with the *Albert* a manuscript indorsement was made on the annuity contract; it is as follows, headed, *Albert Life Assurance Company*, signed by three directors of the *Albert*, and dated 27 December, 1865:

It is hereby certified that, subject to the within-named *Joseph Dale* abiding by and observing and performing the conditions and stipulations contained in the within contract on the part of the said *Joseph Dale*, the capital stock and funds of the *Albert* [&c.] shall, according and subject to the provisions of the deed of settlement of the same company, and also subject to prior claims, be liable to pay the within-mentioned annuity, as and when the same shall become payable under or by virtue of such contract.

The annuity contract is produced by Mr. *Dale*; and he admits that the contract, in whatever circumstances, was, in fact, sent in to the *Albert* by him, and that he received it back with this manuscript indorsement; that he has retained it ever since; and he now produces it, with (whatever be the legal consequences) this indorsement on it.

The first thing that strikes the mind on reading this indorsement is that, beyond all doubt, it makes the capital stock and funds of the *Albert* liable; it professes to do so, and gives Mr. *Dale* whatever benefit there may be in that. There is nothing whatever to show that the funds of the *Albert* are to be liable by way of additional security, as distinguished from a substituted security; and there is no rational principle on which it should be taken that any person intended that the *Albert* funds should be voluntarily

offered to Mr. *Dale* as an additional security for an annuity, the original security for which he had never in any way been discontented with. However, we have some further explanation of the matter; there is no direct and distinct evidence of what it was which put Mr. *Dale* in motion and led him to send in his contract to the *Albert*. But there is indirect evidence. Mr. *Dale* has made an affidavit, in which (speaking of this and four other contracts held by him, the circumstances as to which others are identical with those relating to the contract I have been dealing with) he says:

Some short time after the amalgamation of the *St. George* [&c.] referred to in the said annuity grants with the above-named *Metropolitan Counties* [&c.] I did, as I believe, and, as far as my recollection serves me, in pursuance of a request made to me by one or other of the said companies, send in each of the said annuity grants to the above-named *Metropolitan Counties* [&c.] for indorsement; and the same were respectively indorsed by three directors and the manager of the said *Metropolitan Counties* [&c.], as appears thereon respectively. Some few years afterwards I was informed, so far as I recollect, by circular, the contents of which I have now no means of knowing or remembering, of the *Albert* [&c.] having become in some way liable in connection with the said annuity grants, and I did, as requested, leave the said annuity grants at the said *Albert* [&c.] for indorsement; and the same were respectively indorsed, as therein appears, by three directors and the secretary of the said last-named company.

Now, although the claimant is in humble life, and not to be expected to understand clearly the bearing of legal matters, he does appear to have had a just appreciation of the meaning of a transaction of this kind. He had had the experience of the amalgamation of the *St. George*; he knew perfectly well the meaning of sending in a contract to be indorsed; he knew that the *Metropolitan Counties* were, in consequence of the first indorsement, the company he was looking to. Then, being informed in some way, as far as he recollects by circular, the contents of which he says he has now no means of knowing, of the *Albert* having become in some way liable in connection with the annuity grants, he sends them in the contract for indorsement. Now it has been very properly admitted (without any admission as to what reached Mr. *Dale*, as to which he can say nothing more than he has said,) that there was a circular issued by the *Western* on the occasion of the amalgamation of the *Western* and *Albert*, and only one circular. Therefore we know very clearly what the

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circular must be which reached Mr. *Dale*, namely, that of 14 July, 1865, signed by Mr. *Hibbert*, Mr. *Bicknell*, and Mr. *Scratchley*.

This circular gives him information that the capital of the new company, or the united company, whichever it is to be termed, is that to which the persons insured, by way either of policy or of annuity, were for the future to look. At this stage it was open to a creditor, especially to an annuitant creditor, to repudiate any such arrangement: but I do not think a creditor was at liberty, having been distinctly told that this was the footing on which it was proposed that future payments should be made to him, to send in his policy or contract; to accept on the back of it an acknowledgment of the liability of an entirely different capital and fund for payment of the annuity; to receive the future payments of his annuity from that new company out of that fund; and then afterwards to turn round and say that he never entered into any contract or engagement to relinquish the security of the original company granting his annuity, and that he has not accepted the security of the new company.

Not only would that be the view I should entertain, if the case rested there, but it is satisfactory to find, especially in dealing with a person in humble life, from the letters that passed subsequently, that Mr. *Dale* must perfectly well have understood the effect of what he was doing. On 20 June, 1866, he writes this letter, without address, but admitted to be written to Mr. *Scratchley*, who had been the actuary of the *Western*, from which, up to the amalgamation, Mr. *Dale* had been receiving his annuity:

I wrote to Mr. *Easum* 13th, last week, for my half-year's annuity, being due on the 12th, and the form of receipt filled up, but I have not received the cheque for it or any answer. I will thank you to send me an answer by the return of post, for when I have written to you before at the *Western* and *Metropolitan Life Assurance*, I have received an answer in two or three days.

Mr. *Easum* was the secretary of the *Albert*. Mr. *Dale* draws the contrast, therefore, between the different offices, and he falls back on the gentleman to whom he had been in the habit of writing at the *Western* or the *Metropolitan Counties*.

Then we have the letter to Mr. *Easum*:

I have sent the receipt for my half-year's annuity, being £24 0s. 9d., due on June 12th, 1866. If you will send me a cheque for the annuity, you will oblige.

And on the 21st he writes again to Mr. *Easum* :

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The cheque came safe to hand, for which I am obliged. I am sorry to have troubled Mr. *Scratchley* with a letter, but being rather longer than from the *Western* office, thought the letter might not have gone right.

He draws the contrast, therefore, between the state of things when he was looking to the *Western* and now when he looks to the *Albert*.

Further, in order to obtain payment of the annuity, it appears to have been the habit of Mr. *Dale*, in accordance with the requisitions of the office, to send in a certificate of a clergyman, to the effect that the annuitant was still alive. The certificate is addressed to the directors of the *Albert*, and, as given in June, 1866, runs thus :

I hereby certify that Mr. *Joseph Dale*, described in an annuity grant of the *Albert Life Assurance Company*, as of *Tunbridge Wells*, and whose signature is affixed below, is now living at *Tunbridge Wells*.

And then the annuitant's receipt subjoined on the same paper is :

Received of the directors of the *Albert Life Assurance Company* the sum of £24 Os. 9d. being half-year's annuity on the life of *Joseph Dale*, due on the 12th day of June, 1866, under the company's annuity contract.

I think, therefore, although I recognise entirely the principles laid down in *Pott's Case*, and in a similar case should be prepared to follow those principles, this is a case altogether different. I think there is a deliberate acceptance here of the liability of the *Albert* and of a pledge by the directors of the assets of the *Albert* in substitution of the liability of the *Metropolitan Counties*.

I ought to add, as a proof how very loosely people bring themselves to think of these things when the crisis comes, how easily they persuade themselves as to what they intended to do in past time, that Mr. *Dale* says in his affidavit this :

I am wholly unacquainted with law and business matters ; and I never considered what was the legal effect of either of the said transactions ; but of this I am positive, that I never intended to release either of the said companies which had become bound to me under the circumstances aforesaid on the said annuity contracts :

although, at this moment, his claim is based on a policy issued by one of those companies, namely, the *St. George*, and his application for payment is against a different company, namely, the *Metropolitan Counties*.

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I think, therefore, Mr. *Dale* must rank as an annuity creditor against the *Albert*, and not against the *Metropolitan Counties*.

It was understood that it was a representative case, and the costs will be paid accordingly.

Solicitors for Mr. *Dale*: Messrs. *Lewis, Munns, & Longden*.

Solicitor for *Metropolitan Counties*: Mr. *Rowland Miller*.

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Amalgamation—Marshalling.

1871

June 3, 10, 15.

On the construction of the several amalgamation agreements between the *Albert* on the one hand, and the *Bank of London*, *Medical*, *Family Endowment*, *Kent Mutual*, and *Western*, respectively, on the other hand; *Held—*

(1) That the respective transferor companies were entitled to indemnity from the *Albert* against liability on policies of assurance and annuity contracts, whereon claims should be established against the respective transferor company; but that this indemnity was limited to the amount of the share capital and other assets of the *Albert*:

(2) That the indemnity did not extend to the expenses of the liquidations of the several transferor companies.

Amalgamation by directors, *ultra vires*, maintainable on ground of acquiescence of shareholders.

Observations on marshalling.

THIS was an application for a decision on the question of the effect of the indemnities given by the *Albert* to the *Bank of London*, *Medical*, *Family Endowment*, *Kent Mutual*, and *Western*, respectively, under the amalgamation agreements with them.

Sir *Roundell Palmer*, Q.C., (Mr. *Waller* with him) was for a committee of shareholders in the *Albert*.

Mr. *Higgins* was for the *Albert*.

Mr. *Eddis*, Q.C., (Mr. *Rodwell* with him) was for the *Bank of London* and for the *Family Endowment*.

Mr. *G. O. Morgan*, Q.C., (Mr. *Lemon* with him) was for the *Medical*.

Mr. *W. H. Herbert* (solicitor) was for the *Kent Mutual*.

Mr. *Eddis*, Q.C., (Mr. *Cracknall* with him) was for the *Western*.

Sir *R. Palmer*:—The liability of the *Albert* to indemnify is limited as on their own policies and annuities; for (1) it was *ultra vires* for the *Albert* directors to contract except for indemnity so limited; (2) according to the true construction of the amalgamation agreements the contract of indemnity was so limited.

There is a subsidiary question as to the liability of the *Albert* to

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indemnify the other companies against the costs of their own liquidations. The *Albert* deny their liability.

The *Albert* deed contained no provisions for amalgamation. In 1860 resolutions were passed at general meetings of the *Albert* purporting to give power to the directors to enter into amalgamation agreements. The amalgamation with the *Bank of London* was in 1858, before those resolutions. All the others were after. In that respect the case of the *Bank of London* is distinguishable. But it was not competent to general meetings to give, and they did not, in fact, give, amalgamating powers authorizing the creation of unlimited liability.

The business of the *Albert* is defined in the first witnessing part of the deed, and there would be no power by any resolutions to alter that definition. Clauses 21, 30 of the deed relate to powers of alteration of the deed. The proviso in clause 30 puts an absolute restriction on the power of alteration, so that it does not extend to an alteration of the fundamental principle of the constitution of the company, namely, the limitation of the individual responsibility of each proprietor to the amount of his share in the capital.

The amalgamations were all effected by the directors of the *Albert*. General meetings of the *Albert* were never called on to sanction any one of them. The directors could not go beyond the deed in any point which it provided for, unless its provisions were competently altered by a special general meeting, and then they could not go beyond the deed as so altered.

The clauses relating to policies and annuities are 65, 70, 79. They necessarily cover every contract which is in substance an assurance, whether it is a re-assurance in favour of another company primarily liable on a risk, or an original assurance. If the substance of a transaction is the assurance of another company against its risk on a life, that can only be effected, whether in the shape of a formal policy or otherwise, on the terms of these clauses.

Then there are two important series of clauses, (1) those relating to indemnities *inter se* to members and trustees, and (2) those relating to transfer of shares.

The second series are most important, because all the amalgamation agreements are unequivocally, on their face, not contracts

with particular, present or future, shareholders, but contracts with the company, involving distinctly reference to the constitution of the company. If, therefore, there are stipulations by the members *inter se* for transfer of shares and change and flux of membership, with most rigid provisions for limited liability, it is manifest that any one contracting with the company intends to take his resort against members for the time being, by virtue of their mutual contract *inter se*, and on the terms of that contract, and not otherwise (clauses 196, 206 to 211).

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The first indemnity clause is in the part of the deed preceding the numbered regulations, and then there are clauses 69, 103, 135, 150, 180, 216, which is the cardinal clause, and which applies to all debts and other demands of or upon the company, and 217 to 223, followed by the penultimate witnessing part of the deed.

These indemnity clauses, taken in connection with the scheme of transfer, have for their object and effect that the limit of liability to the amount of the shares shall be secured, as far as by mutual contract it can be done.

The effect of such provisions has been considered in

Gillan v. Morrison, 1 De G. & S. 421 ;

Worcester Corn Exchange Case, 3 De G. M. & G. 180 ;

Norwich Yarn Case, 22 Beav. 143.

Then as to the amalgamation agreements. The agreement with the *Bank of London* is plainly *ultra vires* of the *Albert* directors in some respects ; for instance, respecting the fire insurance business of the *Bank of London*. As regards the other business, the policies, endowments, and other contracts being within the scope of the *Albert* business, an arrangement to take over a great number of policies, and so forth, might be within the power of the *Albert* directors, whether those contracts were to be taken by way of counter-insurance, or by way of novation, or otherwise.

LORD CAIRNS :—Suppose that in place of the agreement being in general terms, it was to this effect : Whereas the *Bank of London* have granted the annuities mentioned in Schedule I., and the policies mentioned in Schedule II., now the *Albert* hereby undertake, for the considerations mentioned, to pay and satisfy those annuities and policies in the same way as if they had been granted

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by the *Albert* themselves, or in case the *Bank of London* are called on to pay them, then to repay to the *Bank of London* what they pay thereon.

Sir *R. Palmer*:—That would bring the thing to a clear point, and would show that the actual construction and intent of those clauses is that the annuities and policies shall be transferred, by way of novation if the necessary parties agree, and if not, then by way of counter-insurance or re-insurance; the operation in both cases being the same as if they had been policies granted by the *Albert* on the day on which they respectively bear date, in which case they would be policies granted under clause 70 of the *Albert* deed, and limited as to liability to the assets and funds of the *Albert*:

Anglo-Australian Case, 4 De G. F. & J. 341.

Then after the amalgamation with the *Bank of London* came the resolutions of 1860, purporting to give to the directors amalgamation powers. These resolutions must be subject to the subsisting clauses of the original *Albert* deed, especially 70 and 216.

In the *Medical* there were two agreements, a preliminary and a complete deed. The preliminary one is general, but the complete one carefully keeps within the due limit of liability. The covenants are expressly entered into in order to bind the assets of the company, but not further or otherwise.

In the case of the *Family Endowment*, clause 74 of the deed of that society contains an extreme power of extending the business to any other objects whatever besides assurance. It would clearly be *ultra vires* for the *Albert* to take over any such contracts. Assuming that not done, then the amalgamation agreement, clause 5, provides that all engagements are to be borne, paid, and satisfied by and out of the funds of the *Albert*. That is emphatically exclusive.

In the case of the *Kent Mutual*, the amalgamation agreements are plain and unequivocal as to the limited nature of the contract.

The amalgamation agreement in the case of the *Western* is not so clear, but in substance it is the same.

With respect to the claim for the costs of the liquidations, some of the agreements provide that the costs of carrying the agreements

into effect are to be paid by the purchasing company, but the winding-up of their own company is a different thing. It might as well be argued that the costs of a suit for administering the estate of a deceased person, instituted at any distance of time, were to be borne by some person agreeing with the executors to pay all the debts, which might or might not be a competent agreement.

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Mr. Higgins:—There can be no B list here. Any person in the position of one of these five companies can only have resort against the present *Albert* shareholders through the *Albert* deed. There is no common law liability on subsequent shareholders, and no statutory liability; the whole liability is founded on the deed of settlement exclusively; and that deed contains a scheme of clauses showing the unalterable constitutional principle of the *Albert* to be the limitation of the liability of the shareholders. Further, the special resolutions of 1860 did not purport to alter the deed except by the repeal of clauses 138, 144, which have nothing to do with this question. The attention of the shareholders was not called to the possible effect of such an interpretation as that now attempted to be put on the declaratory part of those resolutions.

Mr. Eddis, in the cases of the *Bank of London* and *Family Endowment*:—At common law every member of the *Albert* was primarily liable to the last farthing. That unlimited liability may be modified, to any extent, as among the members, but not as against third parties:

Greenwood's Case, 3 De G. M. & G. 459.

Clause 216 of the *Albert* deed, which is referred to as the cardinal clause, is limited so as to have no operation except as among the members.

The series of transfer clauses contemplate that cases may arise in which there may be a liability, even as among the members, beyond the nominal amount of their shares. They are to be liable not to the extent of, but in proportion to, their shares.

As regards the validity of the amalgamation, the *Bank of London* had a clear power to sell; clause 111 of their deed. Then the *Albert* undertake to pay and meet all claims and demands against the *Bank of London*, and to indemnify them, without limitation expressed.

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LORD CAIRNS:—Whatever might have been said the day after the amalgamation, must not the transaction be regarded at this distance of time as a contract only to transfer policies and annuities, and an engagement to indemnify in respect thereof only?

Mr. Eddis:—Still it was a purchase, the *Albert* taking not only the policies and annuities, but also the fund out of which the *Bank of London* had contracted to pay them, and that is what makes the indemnity reasonable. Can the *Albert* now, after eleven years, say they have taken all the assets, have failed to meet the liabilities, and yet are not bound by the engagement to indemnify?

Era Case, 1 De G. J. & S. 29;

Pare v. Clegg, 29 Beav. 589;

Phoenix Case, 2 J. & H. 441.

The *Albert* shareholders had express notice of the transfer by the *Bank of London*, in the directors' report of 30 June, 1859. It was held out to them as a great advantage. They have acquiesced in it ever since. They cannot now repudiate it as invalid.

In the case of the *Family Endowment* the amalgamation agreement was after the resolutions empowering the *Albert* directors to amalgamate with other companies, without restriction as to terms.

With respect to the costs of the winding-up, it is not contended that they are to be paid as costs of the winding-up. They are asked as costs consequent on the enforcement of the benefit of the covenant to indemnify. If the *Albert* had performed their covenant the *Bank of London* would have had no debts to pay and there would have been no winding-up.

LORD CAIRNS:—A creditor of the *Bank of London*, who has not abandoned the liability of the *Bank of London*, sues them; they have no defence; ought they not to pay, and then come to recover the sum paid and the costs? Can they recover costs which they have occasioned by difficulties which they have put in the way of the creditor, by obliging him, in other words, to wind them up?

Mr. Eddis:—The contract of the *Albert* was that the *Bank of London* were to have no creditors.

LORD CAIRNS:—Is it not like the ordinary case of principal and surety? If the surety fights an action to which he has no defence, he cannot recover from his principal the costs of the action, although the principal is bound to indemnify him.

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Mr. *W. H. Herbert*, in the case of the *Kent Mutual*, submitted that if the liability of the *Albert* was held to be in respect of that company limited, and in respect of the four other companies unlimited, then those four companies should be compelled to resort to that unlimited liability and leave the assets and capital stock of the *Albert* to answer the claims of the *Kent Mutual* and of other creditors in like position.

Sir *R. Palmer* mentioned

Professional Case, L. R. 3 Eq. 668.

LORD CAIRNS:—Yes; on the question of marshalling I had that case in mind.

Mr. *G. O. Morgan*, in the case of the *Medical*:—The words relied on in the covenant in the amalgamation deed, namely, in order to bind the assets of the *Albert* but not further or otherwise, are not meant to limit the liability to the subscribed capital, but are merely protective of the directors against personal obligation, as where the covenant of executors is limited to the estate of the testator. The assets of a company are not only the subscribed capital, but also everything that can be recovered from the company.

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Mr. *Eddis*, in the case of the *Western*:—The *Albert* shareholders had notice of the amalgamation from the directors' report for 1864. The *Albert* have had all the *Western* assets irrecoverably:

Western Case, L. R. 11 Eq. 164.

A reply was not called for.

Judgment reserved.

LORD CAIRNS:—These are claims for indemnity by five companies, the *Bank of London*, the *Medical*, the *Family Endowment*, the *Kent Mutual*, and the *Western*, arising out of the amalgamations of those companies with the *Albert*.

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I repeat that I use the term amalgamation in the popular compendious sense, as used to describe arrangements between insurance companies on occasions when one takes to the business of the other, which vary very much in their character, and without vouching for the propriety of the term to describe those arrangements.

The question argued before me is not whether there has not been a contract of indemnity of some kind made in each case, for that there clearly was, and is not disputed, but whether that contract is a contract binding the *Albert* without any qualification as to the assets out of which it is to be satisfied, and therefore a contract binding the shareholders in the *Albert* without limitation as to the amount of the capital uncalled on their shares.

I may state, also, that the only question now arising is as to the indemnity in respect of the policies and annuities of the companies absorbed by the *Albert*, and the costs connected with their liquidations. It is not a question of indemnity in respect of any other claims.

I may further say, with regard to the cases of all the companies, it is to be borne in mind that on none of the amalgamations do the terms of amalgamation, including the form of the contract to indemnify, appear to have been submitted to or approved by any general meeting of the *Albert*; nor can any case be made against the *Albert* of acquiescence in a contract of indemnity, in the sense in which that contract of indemnity is pressed by the absorbed companies; that is to say, it cannot be proved that the *Albert* as a company acquiesced in any unlimited engagement to indemnify the absorbed companies. No report issued to the shareholders in the *Albert* took notice of any such contract, or gave any information from which a contract to indemnify without limit could be inferred or imagined by the shareholders in the *Albert*. The validity of an unlimited contract to indemnify must therefore depend on the power of the directors of the *Albert* to enter into such a contract.

I ought further to observe that this is a case in which we have not to deal with the claim of what has been termed an outside creditor, in respect of a contract made by the executive of an insurance company in the ordinary course of carrying on their business, and in respect of a subject necessary for the ordinary

carrying on of their business; but what we have to deal with is the case of two companies coming together, professing to act on the powers contained in their respective deeds, examining and reflecting on the extent of those powers, and entering into a contract avowedly intended to be warranted by those powers, and not a contract at variance with or in excess of those powers. That these absorbed companies and the *Albert* contracted on this footing is manifest from the history of the amalgamations, from the manner in which the amalgamations were brought about, from the terms of the various instruments which were executed, from the mode in which resolutions were passed where the deeds of settlement required meetings, in order that the deeds might be strictly acted on, and from the recitals in one or more of the instruments which profess to refer to the powers possessed under the deeds of settlement of the contracting parties.

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It is further to be borne in mind that a power to enter into a contract of amalgamation is most clearly no part of the general powers which the law would imply in directors of an insurance company; it was no part of the powers committed to the directors of the *Albert* by the deed of settlement of the *Albert*. The power to insure lives, and the power to grant annuities on lives, committed to the directors of an insurance company, implying as it does skill and care on their part in selecting lives, could not be contended to authorize the taking over in mass by the executive of one insurance company of all the insured lives and all the annuity contracts of another company, selected and entered into by the executive, not of the first company, but of the other company.

That being so, in order to maintain a contract of amalgamation, or any rights of indemnity arising out of a contract of amalgamation, the power to amalgamate must be shown, and that power must be strictly pursued; and general principles of law which would show that in the ordinary details of business, in obtaining necessary articles and entering into contracts for them, the directors would have power to bind their shareholders, whether their shareholders had or had not stipulated for particular limits of liability in the deed, cannot be appealed to in order to support an amalgamation, or an undertaking to indemnify, as part of a contract of amalgamation.

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The general objects of the *Albert*, as stated in the deed, were the granting of life insurances and annuities. Clause 30 of the deed provided that two special general meetings might amend the deed and make new rules, but not so as—

to repeal or alter the principle established and settled by these presents that the individual responsibility of each proprietor shall, as between himself or herself and his and her co-proprietors, be confined to the amount of his or her share or shares in the capital thereof for the time being.

I pause for the purpose of observing on those words ‘as between himself or herself and his or her co-proprietors.’ It was argued that although the deed did not provide for the case of amalgamation, and did not give authority to enter into a contract of indemnity on amalgamation, yet still such a provision might be found in some deed amending the constitution of the company; and that even if the contract were a contract to indemnify without limit, an alteration in the deed authorizing such a contract would not be at variance with the fundamental principle of the company, because the fundamental principle is only stated to be that the individual responsibility of each proprietor shall, as between himself or herself and his or her co-proprietors, be confined to the amount of his or her share or shares in the capital; and it was said that the liability might be limited as between the shareholders, but yet be unlimited as regards third parties. In my opinion, that distinction is not a sound one. Suppose, for example, that unlimited liabilities to the extent of £100,000, *ultra* the capital of the *Albert*, were attempted to be thrown on the *Albert* through the medium of a covenant to indemnify on an amalgamation. It is quite clear that, if this be a valid covenant, the responsibility of each proprietor, as between himself and the other proprietors, would not be confined to the amount of his share in the capital, but he would have to provide for his aliquot and proportional share of this £100,000, *ultra* his proportion of the original capital. It seems to me, therefore, that the true construction of the fundamental rule of the company is, that, as regards changes in the deed, those changes must observe that fundamental rule in this sense, that the changes must not authorize the directors to enter into any contract which would bring on any shareholder any greater liability than the unpaid amount of

his capital. There may be contracts necessary to the carrying on of the business, the validity of which will not depend on special authority to be delegated to the directors through the medium of changes made in the deed. As to those contracts, there may be a liability of the shareholders without any limit; but with those contracts we have not here to deal.

Then clause 65 provides that the directors shall have power to grant assurances on such terms as they think proper; clause 70 requires that they shall cause it to be stated in all policies and grants of annuities, that the subscribed capital, and other the stocks, funds, and securities and property of the company, at the time of any claim in respect of a policy or annuity, shall alone be liable to make good the claim; and clause 79 provides that the directors may effect re-insurances in any other office, on such terms as they think fit.

In this state of things, we have first to deal with the agreement between the *Albert* and the *Bank of London*. At the time this agreement was entered into, there was no power in the *Albert* directors to amalgamate. The deed, made between the *Bank of London* and the *Albert* directors, is dated 7 October, 1858. The first clause provides that the business of the *Bank of London*, except the fire insurances, which were dealt with specially, and the goodwill, shall on and from 6 September, 1858, be transferred and assigned, or be deemed to have been transferred or assigned, to the *Albert*, and shall thenceforward belong to, and be carried on and conducted by, the *Albert*; and the *Bank of London* and the board of directors thereof shall on and from that day cease to carry on such business, except for the benefit of, and in trust for, the *Albert*. The second clause provides that all property of the *Bank of London* shall become, or be deemed to have become, the property of the *Albert*. And the third provides that—

All the debts, engagements, liabilities, and risks of the [*Bank of London*] association existing or in force and all claims and demands against the association or the trustees thereof, in respect of any act, transaction, or omission of the association or of the board of directors thereof, whether now known or communicated to the [*Albert*] company or not, and whether first made before the said 6th day of September or not, and although the same may have arisen from some mistake shall be paid, performed, borne, undertaken, and met by the [*Albert*] company; and the [*Albert*] company shall at all times save

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harmless and keep indemnified the [*Bank of London*] association and all trustees thereof, and the board of directors, and all other proprietors thereof, from and against the same, and from and against all actions, suits, and proceedings in respect thereof, and all costs and charges connected therewith, but always excepting fraudulent default.

Now, I have said there was no authority for the directors to enter into a contract of amalgamation of this kind, for the taking over of insurances and annuities in mass. It appears to me, however, that this contract for amalgamation can be maintained, from the circumstances which subsequently happened; because it was clearly brought home to the *Albert* shareholders by their reports and by the accounts of their business that these policies and annuities had been taken over. But the utmost deduction that can be drawn from that is, that the *Albert* are bound retrospectively to approve of these contracts of insurance and grants of annuities in the same way as if they had been issued severally and singly in the first instance by themselves. That extent of approval and acquiescence must be imputed to the *Albert* retrospectively, but nothing beyond that. The *Albert* shareholders do not appear to have been made aware, and still less do they appear to have approved, of any contract of indemnity connected with these policies and annuities binding the shareholders in the *Albert* beyond the amount of their shares. It would be in the strongest degree improbable that the *Albert* shareholders, who have carefully stipulated that, in every grant of annuity, and every policy of insurance of their own, care should be taken on the face of the instrument that no further liability is to be attached to them than as respects their capital, should be willing to take over the very large business of another company, consisting exactly of the same sort of engagements by way of annuity, and by way of insurance, and to take them over on a wholly different footing, making themselves liable without any regard to the amount of their unpaid capital. I think, therefore, that if the earlier part of this deed, the first, second, and third clauses, were to imply an unlimited contract to indemnify, the contract would be entirely *ultra vires* and invalid. I do not think it is necessary to put that construction of unlimited liability on it, and I think one may infer from clauses 5 and 6 that it was not even intended by those who entered into this deed. On the face of the deed, the idea of those who entered

into it seems to have been this, that to the extent of the liability on the policies and annuities undertaken by the *Albert*, and coincident with that liability, they were to protect the *Bank of London*, who were throwing that liability on them; but the extent of the liability in respect of the policies and annuities taken over was to be measured by the standard of the right of policy-holders and annuitants whose contracts had been granted by the *Albert* originally, and that would have been a right limited to the amount of the *Albert* unpaid capital. Clause 6 authorizes the *Albert* to issue fresh policies of their own in lieu of the original policies of the *Bank of London*.

Dealing, therefore, with the claim of the *Bank of London*, I am clearly of opinion that the *Albert* directors had no power to make an unlimited contract to indemnify; if the contract to indemnify is to be so construed, which I question, I am also clearly of opinion it is a contract *ultra vires*.

Before the next amalgamation, an additional power was given to the *Albert* directors. I repeat that, according to my construction of the *Albert* deed, it was not in the power of the *Albert* to alter the fundamental principle of their original deed by giving to their directors any further special or new authority to cast on the shareholders in the *Albert* a liability greater than that which would arise from the amount subscribed on their original shares. The power, however, that was professed to be given by the general meeting to the directors was—

to acquire, by purchase or otherwise, the business, goodwill, and assets, or any part of the business, goodwill, or assets, of any other life assurance company or society or to amalgamate or unite the business of any such company or society with the business of the said *Albert* upon such terms and conditions as they shall think expedient; and especially that the said directors shall have power to enter into contracts, to be binding on the said *Albert* to pay and satisfy claims on and engagements of such other company or society, and to grant compensations and for the purposes aforesaid, or any of them, to make any arrangements, and to enter into and rescind or modify any contracts or agreements, in the name of the *Albert*.

That does not profess on the face of it in any way to alter the fundamental rule of the *Albert*. It is not a resolution professing to alter that part of the deed. Every word of the power here given to the directors may be satisfied by authorizing them to

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make amalgamations, maintaining intact the fundamental principle of the *Albert* deed; and in my opinion, if these resolutions went further, they were resolutions *ultra vires* of the general meeting.

That might relieve me from the necessity of entering into the details of the agreements that were made; because, as I have said, there is no question of acquiescence here as to the contracts to indemnify; and if the agreements on the face of them go beyond what I hold to be the power of the directors, the agreements, not having been ratified in any way by general meetings, can have no force in as far as they exceed the powers of the directors. However, I may refer shortly to the agreements themselves.

I take first the agreements in the case of the *Medical*. With regard to them it certainly is satisfactory to find that there was no attempt whatever to outstep what I hold to be the limit of the powers of the directors of the *Albert*. There were two instruments—first, a preliminary agreement for amalgamation; then that expanded into a complete deed. It is to the expanded agreement that we must look if there is any variance between the two. The preliminary agreement states the resolutions of the *Albert* board of directors. Resolution 5 is:

That policy-holders in the *Medical* [&c.] shall be invited to substitute for their subsisting policies other policies to be issued by this [the *Albert*] company, which substituted policies shall be deemed and considered to be of the dates of the original policies, and shall be of the same amount, and subject to the like annual and other periodical payments, as those policies for which they shall be substituted, and which substituted policies this company shall grant to all persons willing to accept the same:

an engagement which clearly would not throw on the *Albert* any liability beyond the capital and assets. Then resolution 9 is:

This [the *Albert*] company shall discharge all claims upon the *Medical* [&c.], and indemnify the same society against all obligations of every kind into which it may have entered, except immediate claims and demands arising as aforesaid, and which are to be paid by the *Medical* [&c.].

Then the final deed, which is made between the *Albert* directors of the first part, the former directors and other representatives of the *Medical* of the second part, and certain trustees of the third part, witnesses:

In further performance of the said contract, and in consideration of [&c.] they,

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the said several persons parties hereto of the first part, do hereby as the directors of the said *Albert* [&c.], and in order to bind the assets of the said company, but not further or otherwise, or for any other purpose, for themselves, their heirs [&c.], covenant with the said parties hereto of the second part, and also with the parties hereto of the third part, and each and every [&c.], that the *Albert* [&c.], shall and will duly pay and satisfy all claims on policies issued by the *Medical* [&c.], occurring by death after four o'clock on the 21st day of September, 1860; and also pay, satisfy, and discharge all other claims and demands against, and all other engagements, liabilities, and obligations of the *Medical* [&c.], except such claims, demands, and liabilities as are hereinafter otherwise provided for, and shall and will from time to time, and at all times, well and sufficiently save, defend, and keep harmless and indemnified the said parties hereto of the second part, and all other the shareholders of the said dissolved company, and also all and every the officers of the said dissolved company duly employed in the business thereof, their estates and effects, from and against all actions, suits, costs, charges, damages, expenses, and consequences, whatsoever, whether in respect of any policy issued by the said dissolved company, or of any other contract, liability, obligation, or engagement of the said company, or of any act done on behalf of the said company, or of any matter or thing in anywise relating thereto, or connected therewith respectively; provided always that the covenant hereinbefore contained shall not extend, or be construed to extend, to any act or acts done by the said officers, or any of them, without the authority of the said dissolved company.

It is as clear as anything can be that that obligation is an obligation entered into merely to bind the assets and the capital of the *Albert*, and not for any further or other purpose.

In the *Family Endowment* agreement, the material clauses are 1 to 6. Clause 5 is—

All premiums and other sums of money, after the said 1st day of January, 1861, paid or payable upon or in respect of policies of assurance, or upon or in respect of endowments, grants, or engagements of the [*Family Endowment*] society in force on that day, shall belong to and be the property of the [*Albert*] company; and all risks, engagements, and liabilities upon or in respect of all such policies, endowments, grants, or engagements, and also all charges and expenses connected therewith, shall be borne and paid and satisfied by and out of the funds of the [*Albert*] company.

Now, this is an engagement entered into by the *Albert*, not for the benefit of the *Albert*, but for the benefit of the *Family Endowment*. Therefore the *Family Endowment* contract with the *Albert*: You shall pay and satisfy all our engagements by and out of the funds of your company. But if the meaning was: You shall promise us that your company and the shareholders therein shall, without reference to your funds or capital, pay and satisfy all these engagements: this clause that I have read would be perfectly

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unmeaning. Therefore, I should hold, if necessary, that even on the agreement itself, without the consideration antecedently of what would be the power of the directors of the *Albert*, it would appear there was no engagement entered into which was intended to do more than bind the funds and assets of the *Albert*.

In the *Kent Mutual* there were two deeds. Clause 13 of the first deed is thus :

That the subscribed capital and other the funds and property of the said *Albert Company*, their successors and assigns, shall (subject to all prior claims) alone be liable to answer claims under or by virtue of these presents or of anything herein contained ; and that no director or proprietor of the said *Albert Company*, or other person interested therein, shall be in anywise personally or individually liable to answer or contribute towards answering any claim by virtue of these presents or of anything herein contained, beyond the amount of the unpaid portion of his or her share or shares in the subscribed capital of the said *Albert Company*.

Again, clause 16 is thus :

That immediately from and after the said dissolution shall have taken place, and thenceforth and for ever, every member of the said *Kent Society*, his and her estates and effects, shall, out of the funds of the property of the said *Albert Company*, their successors and assigns, be saved harmless and kept indemnified against all actions and suits :

and so on ; and in the second deed the covenants are to the same effect. The limitation is clear.

In the last case, that of the *Western*, the agreement recites that the boards of directors of the *Western* and *Albert* had resolved that an amalgamation should take place, and that a provisional agreement for amalgamation should be entered into for the purpose of determining the terms on which the *Western* should transfer their business and liabilities and assets to the *Albert*, if it is found that they have power to carry into effect the amalgamation, or can obtain such power without having recourse to Parliament. It is satisfactory to find an acknowledgment on the face of the instrument that they did not affect to do anything beyond what their legitimate powers would warrant them in doing. Clause 2 provides thus :

In consideration of the transfer of funds and property to be made to them as next hereinafter is provided, the said [*Albert*] company shall pay and satisfy all claims and demands upon the said society arising from assurances, annuities, and other contracts and agreements, when and as the times for the payment and

satisfaction of the same successively arrive, and shall take upon itself all other the liabilities of every description of the said [*Western*] society.

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And clause 4 says :

The said [*Albert*] company shall give to all policy-holders in the said [*Western*] society whose policies are in existence at the period of its dissolution, the same present and future facilities, privileges, and benefits, in every respect as if they had been effected with the said company. . . .

And, further, as regards policies in the *Western* on the participating scale, clause 5 provides thus :

At the next and all future divisions of profit by the [*Albert*] company the policy-holders in the said [*Western*] society on the participating scale shall participate rateably in the same manner as if their policies had been originally taken out in the said company.

It seems, therefore, throughout to be the idea that the policy-holders would all go over, and they would then be, or were intended to be, in the same position as if they held policies originally issued by the *Albert*, in which case there would be limited liability. And I am not prepared to say, having regard to the recital I have stated, that the *Albert* directors intended to do more than indemnify on that footing and to that extent ; but if they did intend to do more, then I am prepared to hold that that was beyond the powers they possessed.

I arrive, therefore, at the conclusion, with regard to all these five companies, that while they are entitled to an indemnity against the *Albert* in respect of any policies and annuities, the claims on which ought to be satisfied by the *Albert*, that indemnity is limited to the amount of the assets of the *Albert*, and they must take their place as claimants against those assets with other creditors.

§ Then I have to deal with the question of costs. These companies not only claim their costs of coming into the *Albert* liquidation, and establishing their case on an indemnity, as far as they are entitled to an indemnity, against the *Albert* assets, but they claim further to have paid by the *Albert* the costs of the liquidations of these absorbed companies. They say : You, the *Albert*, ought to have satisfied these claims ; it was because you did not satisfy these claims that the claims have fallen back upon us ; it is that that has driven us into liquidation, and you have, therefore, occasioned the costs of our liquidations. Now, I can-

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not accept that argument. The *Albert* were bound to have paid the claims; there is no doubt about that. But when the *Albert* did not pay the claims, there being no dispute about the claims, and the claims were presented by those who had a right to present them to one or other of the absorbed companies, those companies had the power of paying and satisfying, if they had been prepared to pay and satisfy, the claims. What was the precise ground that, technically, was the foundation of the winding-up order in each case I do not at this moment know, and it is not necessary for my purpose that I should inquire. It either was because they ceased to carry on business, or because there was a claim which they had not satisfied, or for one of the other reasons mentioned in the Act. But, whatever the statutory ground was which made the Court wind up one or another of these companies, the real reason for the application for a winding-up was the reason of their not paying a debt presented to them for payment. If from any circumstances they were unable to make the payment, or did not choose, that is what has led to the winding-up in each case. That winding-up will settle a great many other things with which the *Albert* may have nothing to do. It will settle the rights of the contributories among themselves if there should be any assets to return; it will settle the principle on which they should be returned; it will finally dissolve all these companies; all that work will be done in the winding-up of the particular companies, and with all that work the *Albert* has nothing to do. It is the same case in substance as that which frequently occurs when a person, liable only in a secondary degree, is called on to pay a debt; he ought to pay it if there is no defence to it; and if he makes a difficulty, and renders it necessary to incur costs in order to obtain payment of the debt, such of the costs as fall on him he cannot charge against the person primarily liable. Therefore these absorbed companies cannot charge the costs of their liquidations against the *Albert*; but they are entitled to their costs, as any other creditors would be, of establishing their claim against the *Albert*.

Mr. *Cracknall*:—The costs are paid, in the first instance, out of the assets of the company.

LORD CAIRNS:—Whatever is the rule will be abided by. I do not make any new rule. INDEMNITY
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Mr. *Cracknall*:—The question may arise by-and-by which is not touched on to-day, whether there will be any marshalling.

LORD CAIRNS:—That has been mentioned once or twice. I look on it as concluded. As I understand, a rule has been adopted, and I see no ground for departing from it. There is no marshalling in this sense; the costs of the winding-up, whatever that includes, are paid as a wholly separate matter. The assets of the company are taken as they can be found, or as they can be got in, including the unpaid capital. All creditors of all kinds get a dividend out of those assets. Those assets must not be exhausted in paying any part of the costs of the winding-up if they are deficient. The shareholders must provide the costs of the winding-up *ultra* those assets. I do not mean to encourage the raising of the question, nor am I prepared to say that it cannot be raised, but I understand that to be the present rule of the Court of Chancery.

Solicitors for Committee of Shareholders in *Albert*: Messrs. *Tilleard & Co.*

Solicitors for *Albert*: Messrs. *Lewis, Munns, & Longden.*

Solicitors for *Bank of London*: Messrs. *Paine & Layton.*

Solicitors for *Medical*: Messrs. *Walker, Kendall, & Walker.*

Solicitors for *Family Endowment*: Messrs. *Markby & Tarry.*

Solicitor for *Kent Mutual*: Mr. *W. H. Herbert.*

Solicitor for *Western*: Mr. *Manning.*

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 June 5.

DRIVER'S CASE.

List of Contributories.

It being doubtful, on the construction of an amalgamation agreement, whether or not the taking of shares in the capital of the transferee company was intended to be left optional with the shareholders of the transferor company :

Held, that, if on the true construction it was not left optional, the obligation to take shares could not be enforced against a person who had not come in and actively assented.

Where a person registered as a shareholder in the transferor company was dead at the time of the amalgamation, various acts done by his executors *held*, in the circumstances, insufficient to bind his assets with respect to the taking of shares in the transferee company.

THIS was an application (which had been pending in the Court of Chancery on an adjourned summons) on behalf of the *Western* to put on the list of contributories of the *Western* four persons as executors of *Samuel Driver* in respect of 216 shares.

Samuel Driver was a shareholder in the *Metropolitan Counties*, holding 100 shares. He died in May, 1857. The *Metropolitan Counties* amalgamated with the *Western* in August, 1862. The name of *Samuel Driver* was then entered on the register of shareholders of the *Western* as a holder of 216 shares. Afterwards his executors, or some of them, had various dealings with the *Western*.

Mr. *Eddis*, Q.C., (Mr. *Cracknall* with him) was for the *Western*.

Mr. *A. G. Marten* was for three of the executors, who had proved; Mr. *Methold* was for the fourth executor.

Mr. *Eddis* mentioned

Bagshaw's Case, L. R. 4 Eq. 341; and referred to clauses 48, 58, 151 to 160 of the *Metropolitan Counties* deed.

Mr. *Marten* and Mr. *Methold* were not called on.

LORD CAIRNS:—I think these executors cannot be fixed on the list of the *Western*.

Their testator was a shareholder in the *Metropolitan Counties*;

he was dead at the time of the agreement for amalgamation. In order to constitute them, in their representative character, shareholders in the *Western*, it would have to be shewn, either that the amalgamation agreement was such that it bound the assets of the testator, in that part of it which proposed to make the shareholders in the *Metropolitan Counties* shareholders in the *Western*, or that, if it did not *proprio vigore* bind the shareholders in the *Metropolitan Counties*, yet, as against the assets of the testator, it became binding by reason of something done by his executors within the scope of their power as executors.

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First, was the agreement binding on the assets of the testator as an agreement forcing shares in the *Western* on his assets? In my opinion it was not. I do not say a word imputing invalidity to the agreement, or suggesting that it was beyond the powers of the two companies, as an agreement for amalgamation. But the power mainly rested on as authorizing amalgamation is the power given to certain extraordinary general meetings by clause 58 of the *Metropolitan Counties* deed. That clause contains a very ample power of dealing with the rules and regulations and constitution of the society, but always subject to the proviso, which I read as laying down the cardinal rule of the constitution of the society, and the cardinal point to be attended to in any acting on the powers given by this clause, that nothing must be done to alter the position of a shareholder in the society, as a person who is bound only to the extent of his interest in the capital of the society and his liability to pay up that capital. Now, if in an agreement for amalgamation under this clause, there should be found to be contained a provision making a shareholder in the society a proprietor in another company, and imposing on him liabilities with reference to the capital of that other company, it appears to me that that term in the agreement would be invalid against any shareholder in the society who either was in his grave and could not assent, or, being alive, did not actively assent, to the amalgamation.

I think it may be doubtful, on reading the terms of amalgamation, whether there was an actual and absolute obligation professed to be imposed on the shareholders in the *Metropolitan Counties* to become shareholders in the *Western*; I do not desire

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to decide that point. I think the document may be fairly read as saying that the *Western* were to become the purchasers of the business and assets of the *Metropolitan Counties*, and in place of giving, in return, a certain number of thousands of pounds in money, they were to give, in return, as the price of the purchase, 17,000 shares in the *Western*, with £1 paid up on each share. That was to be the form, and the price. If it stopped there it would be optional with any particular shareholder to take his share of the price or to leave it. It might be that the terms of amalgamation were such that in other respects the agreement would stand, leaving only to each shareholder in the society an option to take or refuse his aliquot proportion of the price of the amalgamation. But if that is not the construction, and if the proper construction is that it was obligatory on each shareholder to take the shares, then I am of opinion that that is a stipulation which could not be enforced against a shareholder in the society unless he came in, and actively assented to take them. Therefore the result will be, that, as against the assets of Mr. *Driver*, who was then dead, the agreement will not *proprio vigore* be binding, to make him liable on the footing of his being a shareholder in the *Western*.

Then what has been done by his executors? I have looked at the will, and it appears to me that the executors had not power, in their representative capacity, to bind his assets by taking shares in the *Western*. If they had had that power, it would have been a question whether what they had done had been a sufficient acceptance by them of the shares in the *Western*. I do not think it necessary to say what I should have thought on that question, because I do not find that they had the power. One has executed the deed of acceptance of shares in the *Western* and of adhesion, which was stipulated for in the amalgamation agreement. Even that would not bind the others, or bind the assets; and although there is that act, equivocal until explained, of one executor, appearing to act for all, accepting and taking dividends on receipts specifying the dividends as being in respect of *Western* shares, still even if that had been done advisedly it would not have bound the assets. It is explained that it was done under a mistake.

The result is, that I think the executors are not to be put on the list. DRIVER'S
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The money received by them for dividends in the *Western* must be restored.

The executors have acted in such a way as not to entitle them to costs.

Solicitor for *Western* : Mr. *Manning*.

Solicitors for the Executors : Messrs. *Thomas & Hollams*, and Mr. *S. N. Driver*.

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June 5.

NICHOLS'S CASE.

List of Contributories.

Where a shareholder (deceased) in the *Western* had, in contemplation of the amalgamation with the *Albert*, sold his shares to the *Albert*, received the consideration money, and delivered to the *Albert* his share certificates, with a deed of transfer, but no alteration had been made in the *Western* share register :

Held, that, notwithstanding what had been done on the amalgamation, his executors must be put on the list of contributories of the *Western*.

THIS was an application on behalf of the *Western* to put the executors of Dr. *Nichols* on the list of contributories of the *Western*.

At the time of the amalgamation of the *Western* and *Albert*, in 1865, Dr. *Nichols* was a shareholder in the *Western*, holding 1000 shares. It was arranged, in contemplation of the amalgamation, that the *Albert* should purchase his shares in the *Western* by paying to him £525 three months after the amalgamation, and allowing him in addition 4s. 6d. a share, to be paid by three instalments at the same dates as the same sum was agreed to be paid to the other *Western* shareholders, with interest at 5 per cent. till payment, it being understood that he was to do nothing to impede the amalgamation. His share certificates were delivered to the *Albert*, with a deed of transfer, and the consideration money was paid to him. His name, however, remained on the *Western* share register. He died in 1870.

Mr. *Eddis*, Q.C., (Mr. *Cracknall* with him) was for the *Western*.

Mr. *Pawle* (solicitor) was for the executors.

Mr. *Eddis* and Mr. *Pawle* were heard.

A reply was not called for.

LORD CAIRNS :—This is a very hard case; but I am unable to relieve the executors from their liability. There was shameful neglect on the part of the *Albert* executive. They ought to have

removed Dr. *Nichols's* name from the *Western* register; but as that has not been done, his estate remains bound. The question of any counter-claim against the *Albert* as purchasers from him by way of indemnity will be open. I shall not express any opinion on that question until the claim is made; but that will be open to the executors. It is a clear case for putting them on the list.

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Solicitor for *Western*: Mr. *Manning*.

Solicitors for the Executors: Messrs. *Paule & Fearon*.

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WYATT'S CASE.

Annuity—Application of Trust Fund.

On an amalgamation a fund was vested in trustees on trust in the first place to pay and satisfy all immediate claims and demands to which the transferor company was liable at a specified past moment of time, and which were at the date of the declaration of trust unpaid and unsatisfied. A person who was at the time of the amalgamation entitled to receive an annuity from the transferor company claimed to be paid the capital value of the annuity as an immediate claim or demand within this trust :

Held, that the claim was not maintainable.

THIS was a claim (which had been pending in the Court of Chancery on an adjourned summons) by an annuitant in the *Medical* to preferential payment out of the *Medical* English Trust Fund of the capital value of the annuity.

In 1850 the *Medical* issued an annuity contract securing to *Elizabeth Wyatt* an annuity of £90 for her life in the event of her surviving *Thomas Wyatt*, in consideration of an annual payment during the joint lives. In 1857 the annuity began to be payable. In 1860 the *Medical* amalgamated with the *Albert*. As part of the amalgamation arrangements the fund known as the *Medical* English Trust Fund was set apart, and the trustees thereof were by deed of 14 March, 1861, directed to hold the same on the following trusts :

Upon trust in the first place thereout to pay and satisfy all and every the immediate claims and demands (if any) to which the funds and property of the *Medical* were liable before the hour of 4 o'clock P.M., on the 21st day of September, 1860, and which may at the date of these presents remain unpaid and unsatisfied. And secondly, thereout to pay and satisfy the costs of these presents, and all such costs, charges, and expenses as the said trustees or trustee may from time to time pay or incur in the execution of the trusts of these presents or otherwise. And, thirdly, thereout to raise and pay all and every such sums or sum of money as may be required to pay and satisfy every (if any) claim or demand on account of any policy issued by the *Medical*, or any other liability or obligation of such last-mentioned company which the *Albert* shall not pay or satisfy, and all costs, charges, or expenses.

Mr. *Romer* was for the claimant.

Mr. G. O. Morgan, Q. C., (Mr. Lemon with him) was for the *Medical*.

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CASE.

Mr. Romer contended that the capital value of the annuity was an immediate claim or demand under the first head of the trust. He mentioned

Hunt's Case, 1 H. & M. 79.

Mr. Morgan was not called on.

LORD CAIRNS:—It is clear that this was not an immediate claim or demand. An immediate claim or demand within the meaning of the deed is a claim or demand which had so matured that immediate payment could have been demanded and an immediate action at law brought, or other immediate steps taken, to obtain payment of a sum of money. Nothing could here have been demanded except one instalment of the annuity, if any had been then due. But I understand that all instalments were paid until a period which would be subsequent to the amalgamation. Therefore there was no immediate claim or demand belonging to this claimant at the time contemplated by the deed of trust, namely, four o'clock in the afternoon of 21 September, 1860. Therefore there is not any claim under the first head of the trust.

Solicitor for Claimant: Mr. Judge.

Solicitors for *Medical*: Messrs. Walker, Kendall, & Walker.

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BOURNE'S CASE.

Loan on Policy with Charge on Land—Set-off—Indemnity for Depreciation of Policy.

A borrower from an assurance company on the security of a mortgage of a policy of the company and of a charge on land *held*, on the winding-up of the company, liable to be sued by assignees of the debt and securities for the amount of the loan, without his having a right of set-off in respect of the value of the policy, or a right to indemnity in respect of subsequent depreciation of the policy, the assignees being prepared to restore to him the securities on payment of the mortgage debt.

THIS was an application (which had been pending in the Court of Chancery on an adjourned summons) relative to the getting in of outstanding securities forming part of the *Medical* English Trust Fund.

In November, 1852, Mr. *Bourne* effected a policy on his life with the *Medical* for £2100, and borrowed from them £1900 on the security of a mortgage of the policy and of a charge on lands. On the amalgamation of the *Medical* with the *Albert* the mortgage debt and security were assigned to trustees as part of the *Medical* English Trust Fund.

On payment of the mortgage debt being demanded by the trustees of the fund, Mr. *Bourne* alleged a right to set off the amount of his claim on the policy, or to be indemnified in respect of the alteration of circumstances connected with the policy.

Mr. *G. O. Morgan*, Q.C., (Mr. *Lemon* with him) was for the *Medical*.

Mr. *Cecil Russell* was for Mr. *Bourne*.

Mr. *G. O. Morgan*:—It is admitted there is no claim against the *Medical* Trust Fund; a debt alleged to be due to the mortgagor by the *Medical* cannot be set off against a debt due by him to the trustees of the fund:

Parlby's Case, W. N. 1871, 13, 64, 66.

Moreover, the claim is for an unliquidated sum, which cannot be

set off against a liquidated sum. Further, there is no set-off in winding-up cases. There is none given by statute, as in bankruptcy, and there can be none otherwise. The object is equal division. If a set-off is allowed, Mr. *Bourne* will be paid in full, while other policy-holders may only get a small dividend, and this merely because he happens to have borrowed money from the company; which is absurd.

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Mr. *Russell*:—The assignment to the trustees of the *Medical* Trust Fund was made without Mr. *Bourne*'s assent or knowledge. The assignee cannot be in a better position than the assignor:

Walker v. Jones, L. R. 1 P. C. 50.

LORD CAIRNS:—That is merely an instance of the ordinary rule that the assignee of a chose in action takes subject to all equities which exist; but in this case there was no equity of set-off in existence at the time of the assignment. The right of set-off, if it existed at all (I do not say that it would exist in this case), would only arise when you came to prove and to put some right in suit. It is a right given by statute, or by equity, as a defence to an action, or rather to prevent circuity of action.

Mr. *Russell*:—I do not put it as a dry question of set-off, but I say the mortgagees are coming actively to enforce the security; part of that which they are bound to re-assign is the policy; the policy and the loan are all one transaction. By their own act they have made that policy other than it was when it was assigned; it is the same piece of paper, but it only gives a right to claim against other persons. The right under the policy is the right to receive out of the funds of the *Medical* the amount due on the policy at Mr. *Bourne*'s death. By their own act the *Medical* have debarred themselves from receiving further premiums. They may not have destroyed, but they have lessened, the fund from which his executors are to receive the amount of the policy. Having so entirely altered the security, they cannot now come here and enforce it without offering something by way of indemnity. The indemnity can best be met by way of set-off.

LORD CAIRNS:—Your contention being, in effect, that the

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mortgage debt and the charge on the land cannot be dealt with as absolute items of property, but are subject in equity to a liability to secure to Mr. *Bourne* the fruits of the policy which he mortgaged along with the land; is not that making his mortgage a security to him for the payment of his policy?

Mr. *Russell*:—Suppose the *Medical* had in some way aliened a portion of Mr. *Bourne's* land, they could not have enforced the security; for instance, they could not have brought an action at law on the covenant:

Palmer v. Hendrie, 27 Beav. 349.

That is a parallel case. If both demands had been legal, there would have been a set-off; where one is the subject of equitable jurisdiction the legal demand can be set off against the equitable:

Throckmorton v. Crowley, L. R. 3 Eq. 196.

LORD CAIRNS:—Mr. *Russell* has argued this case with great ability, and has said, I think, everything that could be said for Mr. *Bourne*; but I do not think the case admits of any doubt.

The rule of law is clear. A mortgagee, on payment of his debt, is bound to restore all the securities for the debt; and if he has so dealt with the securities that they are destroyed, or non-existing, that may be a ground for preventing him from enforcing any of his legal remedies against the mortgagor. An assignee from the mortgagee will be in the same position.

But in this case the mortgagee originally was the *Medical*. The *Medical* assigned the mortgage securities to the trustees of the fund created on the amalgamation of the *Medical* and *Albert*. It is those trustees who now propose to sue the mortgagor, Mr. *Bourne*, for the recovery of the debt. The securities in their hands are a charge on some property of Mr. *Bourne*, and the policy of insurance effected by him with the *Medical*. The trustees of the fund, who hold these securities, are perfectly prepared to restore them to Mr. *Bourne* if he pays his debt. There is no difficulty in their doing so. The securities, as far as they affect his property, will be re-assigned or re-conveyed to him. The policy will also be re-assigned; and if it is a policy of the *Medical*, it will continue to be

a policy of the *Medical*. It may be the case, that from events which have happened in recent years, the policy is not so valuable as it was at one time supposed to be, but that is a circumstance which is inherent in the nature of a contract of this kind, and with which the trustees of this fund certainly have nothing whatever to do. The assignees were not concerned with the pecuniary circumstances of the *Medical*, and I certainly am not prepared to hold that the *Medical* trustees, in assigning the policy, along with the other securities, were under a liability to guarantee the solvency of the *Medical*, and that the validity of the assignment depends on that solvency. I therefore think, whether it is called a set-off or it is called an indemnity, there is no such right as is contended for by Mr. *Bourne*.

That makes it unnecessary for me to express an opinion in this case on the general question of set-off in winding-up.

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Solicitor for Mr. *Bourne*: Mr. *E. M. Hore*.

Solicitors for *Medical*: Messrs. *Walker, Kendall, & Walker*.

1871
 June 6.

PARLBY'S CASE.

Loan on Policy—Legal Debt—Set-off.

A policy-holder having obtained a loan from his assuring company on a deposit of his policy, with a memorandum, *Held—*

(1) On the construction of the memorandum, that he was liable to be sued at law for the amount of the loan during the currency of the policy :

(2) That he had no right in the liquidation of the company to set off the value of the policy against the amount of the loan.

THIS was a proceeding (which had been pending in the Court of Chancery on an adjourned summons, and in an action at law) against General *Parlby* for recovery of a loan on a policy without set-off of the value of the policy.

General *Parlby* was the holder of a policy in the *Albert*, dated in 1839, on his own life, for £600. In 1858 he borrowed £250 from the *Albert*, and by way of security deposited with them the policy, with the following memorandum :

Whereas by a policy of assurance under the hands of three directors of the *Albert*, dated the 2nd day of April, 1839, and numbered 136, the sum of £1000 (now reduced to £600) is assured to be paid to me the undersigned *Brook Bridges Parlby*, my executors, administrators, or assigns, after my decease, together with such sums as may be added thereto by way of bonus or addition :

And whereas I have received the sum of £250 by way of loan from the *Albert*, which is to bear interest at the rate of £5 per centum per annum from the date hereof, and have deposited the said policy with the said company as a security for such sum and the interest thereof :

Now I do hereby, in consideration of such loan, subject and charge the said policy with, and do declare that the same is deposited with the said *Albert* as a security for, the repayment to the said company of the said sum of £250, and interest thereon at the rate of £5 per centum per annum from the date hereof :

And do hereby agree that such sum, together with all interest which may accrue due in respect thereof, unless previously discharged by me, shall and may be deducted and retained by the said company out of the amount assured by the said policy and bonuses thereon :

And I do hereby further agree to pay interest upon the said sum of £250 from the date hereof at the rate of £5 per centum per annum, until the same sum shall be discharged by me or deducted as aforesaid, such interest being hereby intended to be made payable together with and in addition to and at the same time as the premiums payable upon the said policy :

It being hereby expressly agreed by me that the said company shall not be obliged to receive the premiums for the time being payable in respect of the said policy unless the interest for the time being due upon the said sum of £250 shall be also paid therewith, and that the said policy shall be in all respects construed

as if such interest had been originally reserved or made payable by the said policy as part of and in addition to the premium thereby reserved, and shall become absolutely void if such interest be not paid on the day whereon the premium is directed by the said policy to be paid, or if I shall assign or otherwise dispose of the said policy or any right or interest under the same without previously discharging the said sum of £250 and all interest due thereon.

Dated this 10th day of July, 1858.

B. B. PARLBY.

Witness,

HENRY W. SMITH, 11, Waterloo Place.

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Mr. *Bompas* was for the *Albert*.

Mr. *Day* (Mr. *Bevir* with him) was for General *Parlby*.

Mr. *Bompas* stated the case, but was stopped by the Arbitrator.

Mr. *Day* :—(1.) The sum advanced was not recoverable at law. It is not a loan repayable on demand. There is no promise to pay the principal, though there is an undertaking to pay interest. The loan is not payable at any time prior to the time when the policy becomes payable. Although it is a loan in form it is only payable out of a particular fund. (2.) There is a right of set-off here. It is like the case of the bankruptcy of an individual; as soon as proof is admissible the creditor is entitled to the benefit of set-off.

LORD CAIRNS :—The danger of arguing this case by reference to what would be the course in bankruptcy is, that there are enactments of a very stringent and peculiar kind as to set-off in bankruptcy, which we have not here.

Mr. *Day* :—That point is dealt with in

Anderson's Case, L. R. 3 Eq. 337 ;

where it was held that, although there is a winding-up, the parties are left to their ordinary rights, except where there is an express enactment to the contrary. At the moment of the making of the winding-up order there was, in effect, a refusal by the company to carry their contract into effect, and that gave General *Parlby* a right of action, at least on his tendering his premium.

LORD CAIRNS :—The difficulty you have in maintaining that the company have refused to carry the contract into effect is, that the

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company have done nothing and are quiescent, but the Legislature intervene and provide that possession shall be taken of the company and their affairs at a time when their contracts are in operation; that the company shall do no further acts; that an estimate shall be put on all their unbroken contracts; and that no person who has not a right of set-off at that moment shall bring an action. If it were not for section 158 providing for the valuation of a claim of this kind, the whole of the assets would be taken by the liquidators, and divided among persons who had matured claims.

Mr. Day:—Independently of the express words of the statute, General *Parlby* must have a right to have his claim assessed. It is true that he could not bring an action after the winding-up, but the right of action is created, that is, the legal right, the legal cause of complaint, as distinguished from the mere power of issuing a writ. The right of action accrues, and the grievance is committed, the moment after the company are placed in such a position that they are obliged to refuse to carry their contracts into effect:

Hochster v. De la Tour, 2 E. & B. 678.

(3.) Section 11 of the *Arbitration Act* enables the Arbitrator to decide not only in accordance with the legal or equitable rights of the parties, but in such manner as he in his discretion thinks fit, equitable, and expedient. Even if there is no legal defence to an action, still, in such circumstances as the present, it is inequitable and inexpedient that a person who has a claim to the extent of £600 against the company should be compelled to pay to them a debt of £250 due from him.

LORD CAIRNS:—I must say that I am unable to introduce any better principle, or any more equitable principle, in dealing with this case than that which the rules of law and equity already supply me with. Therefore I do not propose to introduce any abstract ideas of my own in addition to those rules. I think those rules will be found to deal with this case in an effectual and proper way.

With regard to the first point, as to there being a debt due at law, I have no doubt at all that there is a debt due. The contract

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is clearly a contract of loan. The result of that contract of loan, unless limited, and unless the operation of it were suspended in some way, would be, that there would be a right on the part of the lender to sue for the repayment of the money. I need not enter into the question about the first year, because that is some time past; but certainly, at the present moment, there is a right to recover this sum, unless there are words in this document suspending the right, and making the sum payable, not at the present time, but at some future time not yet arrived. I cannot find any words for that purpose. I find a recognition, in the most absolute terms, that the money has been advanced by way of loan, and I find that all the subsequent terms are terms in favour of the company, and not in favour of the borrower of the money. For example, the borrower of the money is made to agree that the principal sum,

together with all interest which may accrue in respect thereof, unless previously discharged by me, shall and may be deducted and retained by the company out of the amount assured by the said policy and bonuses thereon.

It appears to me that this is a right given to the company for their benefit, to repay themselves out of the amount secured by the policy, if they found that the most convenient way of repaying themselves. Then the next clause is an agreement to pay interest on the sum at a particular rate and at particular dates, 'until the same sum shall be discharged by me or deducted as aforesaid,' contemplating the two modes of termination of the loan. That, again, is a stipulation which is for the benefit of the office; for the law would not imply a contract to pay interest, much less a contract to pay interest at a particular rate, or on particular days. Then there is a further stipulation, that the interest shall be paid along with the premiums, and the policy treated as becoming void if the interest is not so paid. That again is not a stipulation suspending the operation of the loan as regards the borrower, but is a stipulation in favour of the lender, giving the lender higher rights. I therefore think there could be no defence at law to an action for repayment of the money as an ordinary loan.

Then is there any right of set-off? I do not think the case stands in the way in which it would have stood if the company had

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continued to carry on business, and the life had dropped, and thereupon there had accrued the right to receive from the company the sum of money assured, and then in that state of things the company, or any one representing the company, had attempted to sue the borrower for the amount of the loan. I suppose there is no doubt that in that case there would have been a right of set-off. But the position of things here is very different. The company is wound up at a period of time when there is no breach of the policy, and no right of action. The company is wound up on those considerations mentioned in the Act, which make it expedient that the business of the company should, under certain circumstances, be stopped, its assets be taken possession of by the Court, its liabilities be ascertained, and its assets be divided for the purpose of meeting those liabilities. There would be a good deal of difficulty, if there had not been a special enactment made on the subject, in saying how, in that state of things, a policy current at the time of the winding-up could be looked on as a claim or a liability at all. There would be no broken contract; there would be no right of action; there would be nothing in the shape of an absolute debt. The Act, however, has not left the thing in doubt, because it has provided for a case of the kind expressly by section 158. That provides, in substance, that claims against a company, present or future (which I understand to be claims which either have ripened into debt at the moment of winding up, or have not ripened into debt by reason of there being no contract broken at that instant), shall be proved in this way,—that a just estimate shall be made, as far as possible, of the value of each claim if for any reason it does not of itself bear a certain clear value. Then the General Order points out that, as far as possible, that estimate shall be made as at the date of the order to wind up the company. What General *Parlby*, therefore, as against the company, is entitled to here, is, not a liquidated sum due from the company as a matter of right at the time of the winding-up,—not damages due from the company, unliquidated in the first instance, but to be liquidated by an action,—but to apply to the Court to put a just estimate, as at the date of the winding-up order, as far as possible, on that claim which has not matured, but which, at some future time, he may have against the company. How that value is to be put is not a

matter which I have now to dispose of, but that is what General *Parlby* is entitled to.

PARLBY'S
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Then can that sum, which is to be produced in that way, be set off against an absolute, clear, liquidated debt, due from General *Parlby* to the company? I am not at all prepared to say that it might not have been a very fit thing for the Legislature to have considered whether they would not make a general enactment applying to all cases, carrying section 158 further, and declaring that once a proof was made on an estimate arrived at, as pointed out by that section, the proof so made might be set off against any sum due from the company to the person who had made that proof. But the Legislature have not thought fit to do so, and I do not think it would be for me, under the general powers given to me by the *Arbitration Act*, to introduce—not on any ground peculiar to the case between General *Parlby* and the company—a provision into the *Companies Act* which the Legislature have not thought fit to introduce there. I think I should be going very far beyond my province if I were to do so.

Therefore I must decide that there is a right at law to recover the debt, and that there is no right of set-off, either at law or in equity, of the estimate to be made of the value of General *Parlby's* claim against the company.

Solicitors for *Albert*: Messrs. *Bischoff, Bompas, & Bischoff*.

Solicitors for General *Parlby*: Messrs. *Routh & Stacey*.

1871
 June 14.

WOOD'S CASE.

*Effect of Amalgamation on Non-assenting Policy-holders—Novation—
 Protest.*

An amalgamation purporting to effect the dissolution of a company held not binding on non-assenting policy-holders where the terms of the company's deed of settlement relating to dissolution were not strictly fulfilled.

Novation consequent on amalgamation not established, in the circumstances, against a policy-holder who had formally protested in writing against the amalgamation, and declared by the protest that his future premiums would be paid only subject to and on the footing of the protest, and to prevent any question of lapse.

THIS was an application by Mr. *Joseph Carter Wood* to be admitted as a creditor of the *Western* on several policies granted by that company.

At the time of the amalgamation of the *Western* and *Albert* in 1865, Mr. *Wood* was a policy-holder in the *Western*. He received the amalgamation circular of 14 July, 1865. His solicitors applied to the *Albert* and *Western* for information respecting the financial position of the *Albert*, and the terms of amalgamation. Pending the communications on this subject, the time came for payment by him of premiums on two of his policies, namely, 4 December, 1865. Thereupon he paid the premiums to the *Albert*, delivering at the same time the following protest to the *Western* and to the *Albert*:

To the *Western Life Assurance Society* and its directors,
 trustees, and officers, and to the *Albert Life Assurance*
Company, and all others whom it may concern. }

For and on behalf of *Joseph Carter Wood*, Esq., of the holder and owner of the several policies of assurance mentioned in the schedule hereto, we hereby formally object to and protest against the transfer of the assets and the alleged or attempted transfer of the liabilities of the *Western Life Assurance Society* to the *Albert Life Assurance Company*, and the so-called incorporation of the said society with the said company, which have been intimated to the policy-holders of the said society; and previously to and as a necessary condition of his assent thereto respectively (so far as he is concerned) as such policy-holder, we shall and do hereby require it to be shewn what are the provisions of the deed of settlement of the *Western* which are relied upon as authorizing on the part of the said society the said transfer and alleged transfer or incorporation, and

that the same are sufficient in this behalf and have been complied with duly and in good faith, and also that the provisions of the *Albert* deed of settlement authorize the said company to accept the transfer of and undertake the liabilities of the said society and to incorporate the same; and in particular we require it to be shewn that the said society has transferred to some of the trustees of the said company so much of the funds or property of the said society as is or will be sufficient with the premiums that may become payable in respect of all of the then existing policies of the society to enable the company, and that the company is thereby enabled, to satisfy the accruing claims and demands on the society when and as the time for payment and satisfaction of the same shall successively arrive:

And we further require it to be shewn what in the respective events of the said Mr. *Wood* accepting a guarantee from the said company for payment of the said policies when they shall accrue due, or of his accepting the policies of the said company in exchange for his said existing policies, will be his security for the due payment of the said existing or exchanged policies (as the case may be) when they accrue due. And for this purpose we shall and do hereby require an inspection of the deed of settlement of the *Albert*:

And in the meantime and until the requisitions hereinbefore specified are complied with, or in the event of a refusal on the part of the said society and company, or either of them, to comply with such requisitions, or any of them, we hereby give you notice that the premiums on the said several policies mentioned in the schedule hereto when and as they become due will be offered and paid only subject to and upon the footing of this protest, and for the purpose of preventing any question of lapse in respect of such policies:

And in tendering you or such of you as may be entitled to receive (as on his behalf we do herewith) the premiums on Nos. 1 and 2 of the same policies . . . the said Mr. *Wood* insists upon the foregoing requisitions, and expressly reserves to himself the right to insist upon the same, and to take such proceedings at law or in equity against the said society and company respectively and their respective trustees, directors, and other officers as he may be advised; and in making such tender and payment he desires to be understood as not thereby or otherwise in any respect or particular whatsoever waiving any right which he now has in respect of, or any objection which he may now be entitled to make to, the said transfer, incorporation, or arrangement of or between the said society and company:

And we are also authorized for and on behalf of other policy-holders of the said society to make, and for and on their behalf we do hereby make, the like requisitions and protest.

(Signed) KEMPSON, TROLLOPE, & WINCKWORTH, the Solicitors of JOSEPH CARTER WOOD, Esq., of . . . and other holders and owners of policies issued by the *Western*.

SCHEDULE.

The following are the policies referred to above as being held and owned by the said Mr. *Joseph Carter Wood*. . . .

In January, 1866, a final refusal to supply to Mr. *Wood* the information he asked for was received by him. He continued to

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pay his premiums to the *Albert* until the winding-up, on the usual *Albert* receipts.

Mr. *Phear* was for Mr. *Wood*.

Mr. *Eddis*, Q.C., (Mr. *Cracknall* with him) was for the *Western*.

Mr. *Phear* contended that Mr. *Wood* never accepted the liability of the *Albert*, but paid his premiums on the footing of the protest. He mentioned

Griffith's Case, L. R. 6 Ch. 374 ;

and referred to clauses 145 and 146 of the *Western* deed.

LORD CAIRNS:—Mr. *Wood's* case is a very short one. His case is, that having got the notice of the amalgamation, he serves a counter-notice, saying before he makes up his mind as to accepting the proposal to transfer the liability information must be given to him, and until that is given the premiums which he will pay to keep the policy on foot will be paid provisionally only and without committing him to accept the *Albert* liability. He says the information has not been given to him by the correspondence that passed, but, on the contrary, it was by the last letter declined to be given.

Mr. *Phear*:—That is his case ; with this, that he has performed his part of the contract by the payment at the *Albert* office.

LORD CAIRNS:—He says his protest was given not only to the *Albert*, but also to the *Western*, who were thereby made aware of the footing on which he was going to act.

Mr. *Eddis*:—(1.) The *Western* deed permitted the transfer of liability to be made without the policy-holders being consulted, and bound Mr. *Wood* by the amalgamation arrangement. (2.) Whatever right he might have under that arrangement to have a fund set apart to meet the liability, as in

Kearns v. Leaf, 1 H. & M. 681 ;

he was bound to take proper steps for that purpose. The mere protest could in no sense be continuing, except to enable him to take

such steps. He allowed the matter to go on from time to time; he made successive payments of premiums; and having dealt in that way with the *Albert*, it is too late for him to say he never accepted the *Albert* as his creditors, and assert a right to fall back on the *Western*. He also mentioned

Re Harrison, 10 Beav. 57;

Re Browne, 15 Beav. 61.

A reply was not called for.

LORD CAIRNS:—This case has features of peculiarity which distinguish it from other cases that have come before me.

The *Western* and the *Albert* amalgamated in July, 1865. There was a circular addressed to the policy-holders in the *Western* dated 14 July, 1865. That circular very fairly, as it seems to me, informed the policy-holders of what had been done, invited and encouraged them to accept the *Albert* as their insurers for the future in place of the *Western*, and gave reasons with reference to the capital and business of the *Albert* which might induce the policy-holders to take that step.

The first argument which has to be considered is, that in that state of things the policy-holder in the *Western* had no choice, but that by virtue of the deed of settlement of his own company, to which his policy referred, he was bound, without more, by the arrangement, and obliged to rank against the *Albert*, in place of against the company in which up to that time he had been insured. That depends on the construction of clause 145 of the *Western* deed. That clause contemplates the dissolution of the company, and the making of an arrangement which, if made according to the terms of the clause, would possibly bind the policy-holders independently of any assent on their part. But the clause contemplates as one term on which the liberation of the *Western* from the claims of the policy-holders was to depend, that the *Western* should not only pay and satisfy all claims immediately payable, but also, with regard to claims not immediately payable, including those on current policies, should cause to be transferred to the trustees of the company with which the *Western* were amalgamating the funds which the two companies should consider sufficient, along with premiums payable

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in respect of then existing policies, to enable the company with which the *Western* were amalgamating to fulfil their undertaking to indemnify the *Western* against those claims. Now, if the *Western* take their stand on this clause, and say that by virtue of this clause, without more, without any act or assent on the part of the policy-holder, the amalgamation is binding on him, and he no longer has any claim against the *Western*, they must shew that the clause has been literally fulfilled. The clause contemplates that this fund should be ear-marked and appropriated in some way when the amount should have been ascertained, so that there might be added to it the premiums on the policies transferred, and so that it might be ascertained that the fund transferred and the accruing premiums would be sufficient to pay the policies, the liability on which was transferred. That is a rational arrangement; and without an arrangement of that kind nothing could be more unfair than that the policy-holders should be handed over as regards their claims to another company of which they might know nothing. The essence, therefore, of the arrangement would be the fund being appropriated and not mixed with the other assets of the *Albert*; for it is obvious that if not so appropriated, all the ceremony gone through of ascertaining whether the fund was a sufficient fund or not would be of no avail; for the moment it became mixed in the *Albert* general fund it might be all consumed in paying, not claims of *Western* creditors, but claims of *Albert* creditors. It is sufficient to say that that has not been done here. I arrive at the conclusion that clause 145 has not been strictly pursued. Therefore the policy-holder is not by force of that clause alone thrown on the *Albert*.

Then I have to consider whether Mr. *Wood's* own acts or conduct after the receipt of that circular have thrown him on the *Albert* and liberated the *Western*. In the midst of the correspondence with the office, and while the information which the policy-holder was asking for was withheld, the time arrived for him to pay the premiums on two of his policies. He paid those premiums, and he paid them accompanied with a protest, which seems to me to have been as clear and as distinct and as carefully prepared as anything I ever read. I only wish that on occasions of these amalgamations policy-holders would generally adopt the course taken by this

policy-holder, and furnish the companies with which they are dealing with a notice as clear and as distinct as that of Mr. Wood. The protest was addressed to the *Western* as well as to the *Albert*, and it is admitted that it was served on the *Western*. The protest required those to whom it was addressed to furnish Mr. Wood with information on points which were most material to his interests. He required to be informed whether funds had been transferred to the *Albert* to meet the liabilities of the *Western*, what the amount of those funds was, and whether they would be sufficient to meet the liabilities. He required to be informed of the powers of both companies under their deeds to effect the amalgamation. He required it to be shewn to him what his position would be if he accepted the liability of the *Albert*, and what funds he would then have belonging to the *Albert* for his security, and, as incidental to that, what other claims there would be against those funds. And then his solicitors, speaking for him, went on to say:

And in the meantime, and until the requisitions hereinbefore specified are complied with, or in the event of a refusal on the part of the said society and company, or either of them, to comply with such requisitions, or any of them, we hereby give you notice that the premiums on the said several policies mentioned in the schedule hereto, when and as they become due, will be offered and paid only subject to and upon the footing of this protest, and for the purpose of preventing any question of lapse respecting such policies.

Looking at this protest, at the time it was given, at the time the premiums were paid, it appears to me that that was a course entirely proper for Mr. Wood to take, and perfectly open to him to take. It appears to me that under the contract for amalgamation between the *Western* and the *Albert* the *Western* could not say that payment of a premium to the *Albert*, if paid on the footing on which Mr. Wood avowedly proposed to pay it, was other than a payment of a premium on the old policy, which would be binding on and would continue the obligation of the *Western*, because by the third clause of the deed of amalgamation they had made over the right to receive the premiums in respect of their existing policies to the *Albert*. The *Albert's*, therefore, unquestionably was the hand to receive the premium. The only question was *quo animo* it was paid, and *quo animo* it must be taken to have been received. Looking then to the date of 4 December, and to the payment of these premiums, there could be no doubt as to what the intention

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of the party paying was; and according to the effect of that intention, clearly expressed, the party receiving must receive the premiums. That is a protest which applies not only to the premiums then paid, but also to premiums afterwards to be paid, until the information which was asked for should be given.

The correspondence went on after the protest was delivered; and notwithstanding the refusals at first to give the information required, it was afterwards stated that the united office were ready and willing to answer any questions which Messrs. *Kempson*, in the name of the policy-holder, desired to address. Accordingly, very pertinent and proper questions are addressed, their general character being the same as that of the requisitions inserted in the protest. No answer of a satisfactory kind is given, and the correspondence closes on 18 January, 1866, with a letter from Mr. *Scratchley*, saying on behalf of the united office:

We are not able to recognise a right to further information on the part of policy-holders, and you must excuse me therefore for declining to supply you with the figures you wish for.

In that state the matter is left. Premiums are paid in 1866, 1867, and 1868, and I assume in part of 1869.

It was said by Mr. *Eddis* that Mr. *Wood* did not do enough, that he ought not to have stopped there, that he ought to have taken proceedings; and that if the *Albert* had been a prosperous company, if in place of being wound up the *Albert* had been solvent and the *Western* insolvent, Mr. *Wood* might have come forward and have claimed to rank against the *Albert*, might have contended that he had abandoned the security of the *Western* and taken to that of the *Albert*. I am not prepared to say that the matter was not to some extent left ambiguous when it broke off on 18 January, 1866, because it certainly was open to Mr. *Wood* at that time either to have maintained the attitude he had taken up on 4 December, or to have abandoned that attitude and come in and ranked against the *Albert*; he might have taken either course, he had not put it out of his power to take either course. But he had delivered his written protest which, as I have said, was expressed to be a protest the force of which would continue until the information he asked for was given, or if the information he asked for was refused. It appears to me in that state

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of things, the *Western* having that protest delivered to them, and being informed that the payment of premiums would be considered to be made on the footing of that protest, it was for them to clear up any ambiguity in the matter. It was for the *Western* to have come forward and to have said to Mr. *Wood*, in some form of communication: You know now what has been done between our two companies; you know now that the *Albert* consider that you are not entitled to the details of the information you ask, and have refused to give it; you must now bring to a point the question you left in some sort of suspense by your protest of 4 December last; we cannot allow you to continue paying these premiums on the footing of that protest, and we cannot allow them to be received on the footing of that protest; either they must, for the future, be received as premiums payable to the *Albert* on the footing of your being insured in the *Albert*, or we must call upon you to bring the matter to issue if you insist that we are still liable. The *Western* remained perfectly silent, and the *Albert* remained perfectly silent. In that state of things it appears to me that the balance is entirely in Mr. *Wood's* favour, and that he is entitled to say that the ambiguity, if any, not having been cleared up, he has rested and continued to rest on his protest, and that the payment of the subsequent premiums was made on the footing on which the payment of the premiums on 4 December was made.

His claim, therefore, is against the *Western*; and he must have the costs in the winding-up of the steps he has taken to enforce the claim.

Solicitors for Mr. *Wood*: Messrs. *Kempson, Trollope, & Winckworth*.

Solicitor for *Western*: Mr. *Manning*.

1871

June 5, 15.

WHITEHAVEN BANK CASE.

Policy—Novation.

Novation consequent on amalgamation established, in the circumstances, against a policy-holder, who, having on the amalgamation received from his assuring company, the transferors, a circular offering, in effect, the liability of the assets of the transferee company in substitution for those of the transferor company, did not repudiate or refuse the proposals in the circular, and thenceforth paid his premiums to the transferee company, and took receipts of that company.

THIS was an application (which had been pending in the Court of Chancery on an adjourned summons) by the *Whitehaven Joint Stock Bank*, to be admitted as creditors of the *Western* in respect of a policy of the *Western* dated 10 December, 1849, assuring £999 10s., with profits, on the life of *James Nicholson*.

The bank had received the circular issued on behalf of the *Western* on their amalgamation with the *Albert*, and sent no answer to it, but thenceforth paid the premiums to the *Albert*.

June 5.

Mr. *Everitt* was for the bank.

Mr. *Eddis*, Q.C., (Mr. *Cracknall* with him) was for the *Western*.

Mr. *Everitt*:—There is no novation here. By the amalgamation agreement between the *Albert* and the *Western* the bank had notice that the *Western* had assigned to the *Albert* the right to have the premiums payable on the bank's policy. The *Albert* having got the *Western* to assign the right to receive those premiums, it was incumbent on the bank to perform the direction of the party with whom they had contracted, and to pay the premiums to the *Albert* in pursuance of the agreement entitling the *Albert* to receive them. Though the bank had not actual notice of the amalgamation agreement, yet they had notice by the circular that the *Western* had entered into an arrangement for transferring the business, and that the *Western* assets had been transferred to the *Albert*; thus the bank were put on inquiry, and in effect had notice of the amalgamation agreement. Therefore, in equity, if the bank had

paid the premiums to the *Western* after that time, it would have been at their own risk, as in the case of any debtor who has notice that his creditor has assigned the debt.

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LORD CAIRNS :—There was no debt; the *Western* had no right to insist on receiving anything. It was entirely optional with the bank whether they would pay the premiums or not, or to whom they would pay them. If it had been a debt which the bank had been bound to render, the *Western* might, no doubt, have said : We require you to render it to *A. B.*

Mr. *Everitt* :—A contract of life assurance is peculiar; it is one entire contract to pay, in consideration of a series of annual payments.

LORD CAIRNS :—There is no contract by the assured to pay the premiums. The circular is clear notice that the footing on which the *Western* wanted the bank to act was their becoming insured in the *Albert*, and having the great benefits and advantages which they describe as resulting from that arrangement. Suppose events had turned out differently; that the *Albert* had been prosperous, with large bonuses; would not the case of the bank have been in equity complete? They might have said: We received the circular; we paid our premiums to the *Albert*; and now we require the *Albert* to fulfil their contract with us, as stated in the circular.

Mr. *Everitt* :—The *Albert* might have answered to the bank: Shew that you accepted those terms. The bank were entitled to construe the circular as a mere notice of a fact telling them that the business was being carried on, but that notice did not put the bank under any obligation till they had acceded to it by dealing with the *Albert* in some way, as, for instance, by accepting an *Albert* bonus.

LORD CAIRNS :—You treat the question rather as one of law; is it not really a question of fact? You produce a receipt from what I will call, for brevity, the wrong company, not the company which assured you. That may be explained. You may have paid

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the premium to that wrong company either by way of accepting that company as your future insurers, or in the capacity of agents of the original company. The question, then, is a question of fact—with what intention did you pay, with what intention did the *Albert* receive, the premium? The only explanation you give of your paying the premium to the *Albert* is that you received the circular. Now, the circular tells you that the business has been incorporated, and that in future the policy-holders will have certain rights which are described as being highly advantageous with reference to the capital of the *Albert*. That is the result of the explanation you give of the circumstances under which you went to pay the premiums to the *Albert*. If you wanted to put some other complexion on the transaction, it would have been necessary for you to say this: It is true we come to you, the *Albert*, to pay the premium, but do not suppose we come on any recognition of that circular; if you give us a receipt signed by you as agents for the *Western*, we will pay the premium to you.

Mr. *Everitt* :—Something more than a mere notice such as is given by this circular is necessary. The bank were told the business was incorporated, not sold and transferred in the ordinary sense; so that it was in effect the *Western* subsisting under the name of the *Albert*, but with the business of the *Western* combined with the other businesses carried on by the *Albert*. There was not sufficient notice, as regards an outside creditor, of an intention to put an end to the liability. The party who seeks to discharge himself from the liability is the party on whom the *onus* lies to shew novation.

LORD CAIRNS :—Is it a case of that kind? The bank have got a contract, with a condition precedent, which is, that they pay the premium to a particular company. They come to shew that they have discharged that condition, and kept their contract on foot. If it had been during the year that the first payment covered, and it had been attempted to make out a substitution of liability against the bank, that would have been a case of novation, because there would have been a contract as to which each side would have only to wait for its maturing. An insurance contract is one of great singularity. It is a contract as to which at the beginning of every

year there is a condition precedent, on the performance of which it starts into fresh life. WHITEHAVEN
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Mr. *Everitt* mentioned

Heron's Case, L. R. 5 Ch. 632.

Spencer's Case, L. R. 6 Ch. 362.

Griffith's Case, L. R. 6 Ch. 374.

Bartlett's Case, L. R. 5 Ch. 640.

LORD CAIRNS:—In *Bartlett's Case* there was no circular; at least none was proved. The case stood on receipts alone. There may be reason to suspect that, if the assured had been alive, he might have admitted that he had got a circular, as in this case. Then what the Lord Chancellor says is:

It was possible that all the accounts were kept separate—separate one from another—and he might be able to take a receipt from one or the other, and one company might regard the other as agents for giving the receipt.

Do you think, looking at the circular here, it is possible to say it conveyed the intimation that they were going to keep separate accounts for the two companies?

Mr. *Everitt*:—The basis of our argument is, that the *onus* is on the other side. If the question of novation is to be treated as a question of fact, the case of an annuitant entitled to payment *in presenti* may be a stronger case for inferring novation than where the person is making payments:

Pott's Case, L. R. 5 Ch. 118.

If the person chooses to accept payments from the transferee company, and takes the benefit of the increased assets of that company, that is a distinct act done, referable to the contract, and is an election to take the benefit of the arrangement, if it is a beneficial one; and he is estopped in equity from complaining. The question of novation is simply a question whether there has been some act done assenting to the proposed arrangement, in connection with which inducements to persons to alter their position have been held out.

Mr. *Eddis* was not called on.

Judgment reserved.

WHITEHAVEN
BANK CASE.

June 15.

LORD CAIRNS:—This is a claim against the *Western* on a profit policy dated 10 December, 1849, on the life of one *Nicholson*, who is still living, the policy being for £999 10s., and no bonus having been declared or paid, and the policy-holder being the *Whitehaven Joint Stock Bank*. The bank had notice that the *Western* incorporated the *Manchester* in February, 1862. Then the circular of 14 July, 1865, was issued to and received by the bank relative to the amalgamation of the *Western* with the *Albert*. This is a plain and clear circular, offering the bank the liability of the assets of the *Albert* in substitution for the assets of the *Western*. There was no repudiation or refusal by the bank of the proposals in that circular. They thenceforth paid the premiums to the *Albert*. The first receipt after this date is on 13 December, 1865. It is thus:

Receipt No. 10,440, policy No. 895, sum assured £999 10s., life of *J. Nicholson*. Received this 13th day of December, 1865, the yearly premium payable on the 9th of December, 1865, under the above policy of assurance.

This is headed '*Western, Manchester, and London Life Assurance Society*, established 1842, Chief Offices, 3, *Parliament Street, London*, and 77, *King Street, Manchester*.' Then in blue ink there is stamped on it, 'Incorporated with the *Albert Life Assurance Company*, 7, *Waterloo Place, London*.' In the following year, December, 1866, the receipt is the receipt of the *Albert*, headed '*Albert Life Assurance Company, Waterloo Place, London*,' stating the premium received for the policy mentioned in the margin, and in the margin is '*W. policy*' (meaning *Western* policy) '*No. 895*,' to identify the policy merely, and not at all varying or qualifying the body of the receipt. The receipts for 1867 and 1868 are similar. I find, therefore, the policy-holder accepting that which was a new contract offered, terminating the payment of premiums to the old company, and making that payment on the footing, as I must hold, of this circular, to the new company.

I am of opinion, therefore, that the *Whitehaven Bank* cannot rank against the *Western*, but must rank against the *Albert*.

Solicitors for *Whitehaven Bank*: Messrs. *Clarke, Son, & Rawlins*.
Solicitor for *Western*: Mr. *Manning*.

KIRBY'S CASE.

List of Contributories—Joint Holders of Shares—Executors.

1871

June 7, 15.

Shares in the *Albert* were standing in the joint names of two persons, without beneficial ownership; one of them was dead; his executors were put on the list of contributories jointly with the surviving holder, but only in respect of the liabilities up to the time of the testator's death.

THIS was an application (which had been pending in the Court of Chancery on an adjourned summons) on behalf of the *Albert*, to put on the list of contributories of the *Albert*, for eighty shares, the executors of Mr. G. G. Kirby, in their representative capacity, jointly with Mr. Anderton, who had been already settled in respect of those shares.

Mr. Higgins was for the *Albert*.

June 7.

Mr. W. W. Cooper was for Mr. Kirby's executors.

Mr. Higgins:—We rely on the *Albert* deed, especially clauses 126, 188 to 192, 197. It is well settled that if there are three or four persons registered in respect of the same shares, they can all be settled and made jointly and severally liable for calls. The clauses of the deed making notice to the first-named holder good, and making the receipt of any one of the holders a good discharge, shew that the notion was that several persons might become jointly and severally interested in shares, and these provisions were necessary to enable the company to deal with such owners; otherwise a separate notice would be necessary for each one.

Mr. Cooper:—These persons were joint tenants of the shares. On the death of Mr. Kirby, the whole legal interest passed to the survivor. The executors have not taken any step under the deed to have themselves put on the register as shareholders. The company have treated the survivor as the sole proprietor, and the executors of the other cannot be put on jointly with him.

LORD CAIRNS:—The testator has virtually covenanted to pay the calls, if necessary.

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CASE.

Mr. *Cooper* :—The covenant is to abide by the terms of the deed, therefore it must be seen how far the deed makes the executors liable in respect of calls. The governing clauses of the deed are 192 and 197, and they do not go to that length. This was a trust account; the whole interest devolved to the surviving joint tenant.

LORD CAIRNS :—Did the liability leave the testator at the same time as the interest? Where there are two names on the share register in respect of a share, the company do not know or care whether the holders are joint tenants, or are tenants in common. They treat them as joint proprietors, and take a covenant from each to pay the calls. When one dies, his mere death does not discharge the covenant. It is a continuing covenant. It may be that by arrangements *inter se* the interest in the property goes over, as by survivorship, to the other. Does that alter the obligation of the covenant? Another question is, would the company transfer the shares without the assent of the executors?

[Mr. *Higgins* :—Certainly not.]

Mr. *Cooper* :—The company after and with notice of the death of Mr. *Kirby*, treated the surviving shareholder as the owner of the shares. The whole interest devolves on him, and, therefore, the primary liability. There may be a secondary liability on the executors as such, but they cannot be put on jointly with the survivor. They can only be put on in a secondary character, as representatives, and not until it is shewn that Mr. *Anderton* cannot pay.

Mr. *Higgins*, in reply :—They ought to be put on, with the like primary liability as others; but it will answer all purposes if they are put on with a secondary liability.

LORD CAIRNS :—What authority is there for that, except in the case of a transfer of shares?

Mr. *Higgins* :—There is power to adjust the rights of all contributories, and to settle the list in such a way as to shew what are the liabilities *inter se*. This company being wound up under Part VIII. of the *Companies Act*, 1862, a contributory is defined

by section 200, which is different from the general definition; and the Court may settle the list in any way the Court thinks proper.

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CASE.

LORD CAIRNS:—I will consider the case. If Counsel on either side finds any authority, I should like to be informed.

Mr. Cooper:—I have diligently searched, and can find no case in which executors have been so put on.

Judgment reserved.

LORD CAIRNS:—This is an application to put on the *Albert* list of contributories for eighty shares the executors of Mr. Kirby, along with Mr. Anderton, who is on the list. Mr. Kirby died on 15 April, 1868; his name is on the register of shareholders. The company being unregistered is to be wound up (under section 200 of the Act of 1862) on the principle of every person being deemed to be a contributory—

June 15.

who is liable at law or in equity to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges, and expenses of winding up the company.

Mr. Kirby had executed the deed either for these shares, or for other shares; clearly, therefore, at his death, he was liable both at law and in equity in respect of the engagements of the company. In addition,—apart from any liability that may have existed as between him and outside creditors,—he was by his covenant liable *inter socios* to make the payments mentioned in the deed; and it is to be observed that in the deed of the *Albert* the covenanting parties covenant not merely jointly, but also each separately. Therefore if there were more persons than one owning a share in the company,—and the deed assumes that there might be more owners than one of a share,—each one of those owners would be a person who in the terms of the deed, so far as related to the deeds and acts of himself, his heirs, executors, and administrators, did thereby, for himself, his heirs, and so forth, covenant with the several persons, parties to the deed, in the

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manner mentioned in the deed. Mr. *Kirby* therefore must be looked on as a person who in his own name had separately covenanted to perform all the engagements and obligations attaching to any shares held by him in the company, either in his own name or in the name of himself and other parties. There is nothing to terminate that liability at his death, as far as liability had accrued up to that time. There is nothing in the circumstance of a person dying that should get rid of his liability. The only question that could arise would be as to liability accruing after death. It is not necessary for me to decide more than the particular point which comes before me. If it had been proved or suggested that Mr. *Kirby* was beneficially interested in these shares, that is to say, that although he and Mr. *Anderton* were on the register, they were there not as joint tenants but as tenants in common, the question might have arisen as to whether there would not after his death be a continuing liability. But if it is the case, as has been assumed, that the shares were standing in these joint names without beneficial ownership, that is, that they were joint tenants with the interest accruing to the survivor, then, it seems to me, there would be no liability in respect of contracts after the death of Mr. *Kirby*, but there would be liability for every contract that had been entered into before his death. In my opinion, therefore, his liability ended at his death, and his executors must be put on the list jointly with Mr. *Anderton*, but in that way,—in respect of the liabilities of the company up to the time of his death.

Solicitors for *Albert*: Messrs. *Lewis, Munns, & Longden*.

Solicitors for the Executors: Messrs. *Walker, Twyford, & Belward*.

SLATOR'S CASE.

*Valuation of Policies.*1871
June 2.

Observations on mode of valuation of policies for purposes of proof in liquidation, with reference especially (in connection with *Bell's Case*) to a case where a policy was held by one on the life of another, who was in a remote part of the world, and not under the controul of the policy-holder.

THIS was an application (which had been pending on an adjourned summons in the Court of Chancery) on the part of *James Slator*, as follows :

That he may be admitted to prove against the estate and assets of the [*Albert*] on the footing of his claim . . . which has been sent in, . . . and which represents the case of a holder of a policy without participation in profits, who, having an insurable interest, has effected a whole-life policy on the life of another, the person on whose life the assurance is effected having with the permission of the [*Albert*] gone to reside, and still continuing to reside, in *North America*, and thereby rendering it impossible for the said *James Slator* to negotiate with another office for the re-assurance of such life. . . .

The claim referred to was as follows :

The following are the particulars of the claim of *James Slator* of . . . in respect of a policy bearing date the 14th day of August, 1868, effected by him on the life of *Catherine Slator*, in the *Albert*, and numbered 27,277.

The said *James Slator* claims to be entitled to rank against the estate and assets of the [*Albert*] as a creditor for the sum of £96 15s., being the total amount of premia paid by him in respect of such policy, together with interest at the rate of £5 per cent. per annum calculated from the respective dates upon which the various sums have been paid by him as and by way of current premia.

The said *James Slator* also claims to be entitled to rank against the estate and assets of the [*Albert*] for such further sum as and by way of damages for breach of contract as this honourable Court may award.

The claimant had filed in the Court of Chancery an affidavit containing the following passages :

8. Early in the month of September, 1864, the said *Catherine Slator* was desirous of proceeding to *North America*, whereupon I applied to Mr. *George Fowler*, the agent in *Dublin* of the *Albert*, for the necessary permission for her to do so, and I was informed by the said *George Fowler* that upon payment of the sum of £2 10s. as an extra premium to cover the risk of sea voyage from *Ireland* to *America*, that permission would be granted, whereupon on the 13th September, 1864, I paid the said sum of £2 10s., and, at the request of the said *George Fowler*, I forwarded my said policy to him, and it was eventually

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returned to me with the indorsement dated the 6th January, 1865, that now appears written thereon.

9. I am able from the perusal of a letter lately received from the said *Catherine Slator* by a member of her own family, and also from information given to me, to state that the said *Catherine Slator* is residing at *Cincinnati*, in the *United States of America*, and that at that place she is engaged in business, and to the best of my knowledge and belief it is very improbable that she will return to *Ireland* or any other part of the *United Kingdom*.

10. And, lastly, I say that I am not now on friendly terms with the said *Catherine Slator*, and I have no power to compel her to effect another insurance, nor have I any knowledge of American insurance offices, nor have I any agent in *America*, and I verily believe that the said *Catherine Slator* would, if applied to, refuse to give me a policy in any other office in lieu of the said policy.

Mr. *J. D. Bell* was for the claimant.

Mr. *Higgins* was for the *Albert*.

Mr. *Bell* :—The question is, what is to be the amount of proof where the life is gone abroad, and cannot be reached. This is not the ordinary case of an uninsurable life. The policy-holder, in these circumstances, is entitled to either (1) payment of the amount insured *minus* the actuarial value of the future premiums; or (2) a return of the premiums paid, with interest (the objection to that being that there has not been a total failure of consideration, inasmuch as the policy-holder has had the benefit of the subsistence of the insurance for the past time); or (3) the surrender value fairly ascertained.

LORD CAIRNS :—The principle of a surrender value would give you everything that you are entitled to, and still may give you more than the office can pay. With a solvent office it would be natural that each claimant should endeavour to shew the utmost damage he had sustained; but where the assets are clearly insufficient, if the assets are rateably divided among the different insureds, and there is a proper estimate of their relative claims, whether the actual claim of each is for the utmost does not seem material.

Mr. *Bell* :—We prefer the first of the three methods, which is consistent in principle with

Stevenson v. Snow, 3 Burr. 1237.

Though it is not the case of a broken contract the company have put it out of their power to go on, and therefore we are entitled to damages :

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Inchbald v. Western Neilgherry Company, 5 N. R. 52.

Mr. *Higgins* :—The principle of

Bell's Case, L. R. 9 Eq. 706,

is that the claimant is entitled to have what may be shortly called the reinstatement value, that is, the amount which a similar office would charge for taking over the contract.

LORD CAIRNS :—Suppose the case of a policy-holder whose premium expired in October, 1869, and who now came to make his claim, how could any office tell what they would have thought of his life if it had been presented to them for insurance in October, 1869? I can understand an office saying : We think now it is a hazardous life, and will charge such and such an additional premium over our ordinary rates, before we will insure. But how can a physician, speaking of a life presented to him to-day, say what was the state of that life, as regards insurability, in October, 1869?

Mr. *Higgins* :—That point was not suggested in the Court of Chancery.

One objection to the first method proposed on the other side is, that in the case of policies of recent date the policy-holder would get nothing. The second method was considered in

Warner's Case, W. N. 1870, pp. 104, 192, 210.

It is the best method, a deduction being made in consideration of the past risk which has been covered. There is no ground for distinction between the present case and the ordinary case. Affidavits have been filed stating the various actuarial views taken of the question.

LORD CAIRNS :—I will read them.

[Mr. *C. E. Lewis* (solicitor) was heard to state what had been done in the working out in the Court of Chancery of the decision in *Bell's Case*. He suggested that a notice should be given that every life would be deemed to be insurable at the ordinary rate, unless the policy-holder shewed the contrary.]

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LORD CAIRNS :—How would the case of a man in *India* be dealt with, in the solution of this problem? Suppose he said: My health is not as good as it was; I cannot say I am as vigorous as I was when the policy was taken out. How would the problem be solved, whether an office in *London* would insure his life or not?

Mr. Lewis :—There are offices that have agents and medical advisers in *India*, and information may be obtained there.

LORD CAIRNS :—Suppose he gave evidence that he had offered in *India* to insure his life and had been rejected; must whoever has charge of the liquidation enter into the question of whether or not he presented himself under fair terms, looking as healthy as he might have done, presenting his life in the most favourable way to a fastidious office, if there is a fastidious office?

Mr. Lewis :—It would be impossible to go into such questions; *bona fides* must be assumed.

LORD CAIRNS :—I am afraid the world is not quite accustomed to act so that one can assume *bona fides*. Suppose a gentleman in *India* wanted to get off the continuance of his insurance; suppose he was under an onerous covenant in a marriage settlement, or for some other reason he wanted to get as large a sum of money as he could, and wished to make out, *pro hac vice* only, that his life was not insurable; how could one guard against the improprieties that might be committed in that way?

Mr. Lewis :—It is a question of investigation, that is, time and expense.

Mr. Bell :—I may mention a peculiar case arising with respect to *India*. A man wanted to insure there, and he was refused, unless he proceeded to *Europe* for a year; that is an uninsurable life.

Mr. Higgins :—There is another subdivision of cases I may mention, namely, where the life has improved, that is, where a large extra premium was charged at the time when the insurance

was entered into, and the life would now be insurable at a smaller premium.]

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A reply was not called for.

Judgment reserved.

The case was ultimately treated as governed by *Lancaster's Case*.

Solicitor for Claimant: Mr. *Lattey*.

Solicitors for *Albert*: Messrs. *Lewis, Munns, & Longden*.

1871
 June 19;
 July 21.

LANCASTER'S CASE.

Valuation of Annuities and Policies.

For the purposes of proof in the liquidation, annuities and policies were directed to be valued as follows:

(a) The valuation to be made in every case as at the date of the winding-up order:

(b) Annuities to be valued according to the tables of the company granting them, and where those tables could not be ascertained, then according to the Government Annuity Tables, the rate of interest taken being four per cent.:

(c) Policies to be valued according to the Seventeen Offices' Experience Tables, the rate of interest taken being four per cent.; the value of the policy being the difference between the present value of the sum assured and the present value of the future premiums, taken as pure premiums; additional premiums payable on profit policies and on policies for *India* being also left out of consideration.

Bell's Case not followed.

THIS was an application for a decision on the question of the mode of valuation in the liquidation of annuities and policies.

Nothing turned on the terms of the policy selected for raising the question, or on any matters of fact connected with it.

Notice was given that all parties interested, with reference to the decisions of the Court of Chancery, in the determination of the question might intervene in the argument.

June 19.

Mr. *Milward*, Q.C., (Mr. *Rowcliffe* with him) was for Mr. *Lancaster*.

Mr. *Higgins* was for the *Albert*.

Mr. *Milward* :—The question has been considered in

Bell's Case, L. R. 9 Eq. 706.

It arises on section 158 of the Act of 1862. This is a claim sounding in damages within that section, and admissible to proof as such. There is a policy issued by the company, the effect of which is that the company contract that they will pay a certain sum if the death happens in the first year, and contract that, if the assured continues to pay, *de anno in annum*, the same premium

during his life, they (the company) will pay the sum assured at the end of the life. There is thus a contract optional on the part of the assured to continue the premiums, but compulsory on the company to receive the premiums if tendered, and if they receive them to pay the sum assured. If without insolvency the company had declined to carry on business, and had declared that they would break the contract to receive the premiums, and that at the end of the time they would not pay on the policy, what would be the remedy of the insured? It would be by action on the implied contract.

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LORD CAIRNS:—Would there be a right of action? Suppose when the insured went the second year and tendered his premium the company refused to receive it, and so in every successive year, would it not be for him to rest on his tender, each year, and wait till the death came, and then for his representatives to shew that he had tendered the premiums regularly, and sue for the policy-money? Could the insured raise the question immediately by an action?

Mr. *Milward*:—Yes; the implied contract on the policy is to receive the money. Tender would require preservation of evidence.

LORD CAIRNS:—No doubt it would be extremely inconvenient.

Mr. *Milward*:—The insured would have another remedy; it would be in his option, the company having broken the contract, and he being ready to go on, to say that he must be restored by them to the position he would have been in if there had never been a contract, that is, to have back his premiums paid with interest.

LORD CAIRNS:—Having had the benefit of being insured for a certain time, could he recover back as on a total failure of consideration?

Mr. *Milward*:—Yes; it is the company who decline to go on with the contract. If it was a mutual declining, the insured could not ask for that. It would be optional for him to wait and sue at the time of the breaking of the contract.

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LORD CAIRNS :—It is dangerous to argue from the case of a company going on with business and breaking an individual contract. We have to construe the Act. It can hardly be assumed that the company have been a voluntary agent as regards the liquidation. They are taken possession of by the Court of Chancery ; the Court requires the company to do no more business, to stop ; and then the Act which gives the Court that power enacts that there shall be admitted in proof against the company all claims against them, present or future, certain or contingent. That *primâ facie* would appear to point to claims which, as far as they are future or contingent at the moment of winding-up, are so for one of two reasons, either because the time for payment has not come, or because it remains to be seen whether a contingency will happen or not, such as to give a right to payment.

Mr. Milward :—The Court has to determine some mode in which the assets are to be distributed. The question is, what is the interest which the policy-holder has in the share of the assets of the company. He has been paying in so much, and he has by his payments created an existing liability.

LORD CAIRNS :—He has created a species of property.

Mr. Milward :—Yes, and to that property he has contributed so much, and his discontinuance of contribution being the act of the law, ought he not in justice to have back from the fund a sum equivalent to the sum he has contributed ?

LORD CAIRNS :—He never had that claim against the company. Does this claim come within the category of claims sounding in damages, at all ? If the event had occurred, the sum would be certain. An action might be necessary, but there would be no doubt about the sum which the jury must award. When an Act of Parliament speaks of a claim sounding in damages, does it not mean damages for a broken contract where no specific sum is fixed ? And it must not be assumed that the fact of a winding-up order being made is tantamount to a refusal, by anticipation, to receive any more premiums ; it is ambiguous ; it, therefore, must not be assumed that the claim is to be valued as a claim on a

broken contract. It may be a claim to be valued on the footing of a contract which was not broken at the date of the winding-up order.

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Mr. *Milward*:—But which was certain to be broken, and afterwards is broken, and the breach of which, therefore, relates back to the moment of the winding-up, light being thrown on the transaction from what afterwards takes place.

LORD CAIRNS:—You have observed the General Order of the Court under the *Companies Act*, 1862?

Mr. *Milward*:—Yes; that does not vary the principle. The true way of looking at it is as a matter of damages. The insured had a right to go on paying, the company agreed that he might go on paying, and that they would take his money; then the time comes when they break that bargain. It is like the case of an underwriter at *Lloyd's* saying to the insured: I declare off the risk; I give you notice that I will not, if there is a loss, be responsible for it; and more than that, there is no use in your suing me by-and-by, because if there is a loss I shall not be able to pay; I therefore put an end to the existing arrangement between us, and you had better take care of yourself and make the best arrangement you can, so as to suffer as little damage as possible. There the damage is not necessarily the sum which the next underwriter in *Lloyd's* room, if he were solvent, would require for that risk, but the amount of that sum is an ingredient in the estimation of the damage to be arrived at. The question comes to be a question of damages, on the principle of reinstating the insured in the same place, as far as the calculation of money paid down at the time will enable him to be reinstated.

LORD CAIRNS:—Suppose you have the life of another person insured for £5000; he is in the backwoods of *America*; he is known to be alive; he is perfectly willing to come back to be re-examined in this country; but he says: I cannot come back at my own expense; you must pay my expenses home and out again; if you do so, then I will come. His expenses home and back again would be, suppose, £100, and you, being the person who wants to

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reinsure, cannot effect the reinsurance without paying the £100; on what principle, the assets being insufficient, could the other persons, who have an interest in the assets, be called on to pay the expenses that you would incur in bringing your life back?

Mr. *Milward*:—On the ground that they, being mutual contractors, are contractors with us for the performance of the policy. We look to the fund. A portion of the £100 would come out of the fund which we contribute to. If we suffer an additional pecuniary loss as a consequence of the common misfortune, should not that be dealt with as part of the common misfortune? It would be hard on an individual policy-holder who has his life in *America*, to have to suffer £100 more loss than another policy-holder who has his life nearer the office.

LORD CAIRNS:—He would not suffer at all, as regards nearness to the office, if all the claims were valued on the other principle, that of ascertaining the value of each as a species of property.

Mr. *Milward*:—As among themselves that may be so, but is it just to us? Is that the contract between the company and us? We have got our contract, and it is pecuniarily valuable to us. The matter is not to be looked at only from the point of view of the company; it is to be looked at from the point of view of the insured. An estimate of value being required, is it the value to the claimant, or is it the value to the company? The Act does not say. Is not the insured entitled to prove for the amount he has lost?

LORD CAIRNS:—It is the value of the thing itself—the value of the claim. If you find, in point of fact, a claim by way of insurance can be ascertained on principles which are well known to persons conversant with insurance business, is it not natural to assume that that is the value within the Act?

Mr. *Milward*:—*Bell's Case* adopts the principle for which we are contending. It treats the matter as a question of damages. What damages would a jury give to each individual? They would give the amount of loss he had suffered. It would be an element in the estimate of damages, what he could go to another

office and have a similar policy for, but that may not be the only guide; because it is clear he is not bound to reinsure at all; he may take the sum and keep it. It is a question of money had and received, though there is that great difficulty that we have had during the time a certain consideration for it. That perhaps would have to be valued and deducted. The other principle does not give to the individual policy-holder a compensation for his individual rights; although, from the point of view of the company, and for their convenience, it might be fair.

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Mr. *Mackenzie* (solicitor) stated that he had acted in

Bleackley's Case, L. R. 9 Eq. 709;

which was the case of a profit policy. He submitted that if the insured's damages were to be ascertained, that must be done with reference to the amount of premiums he had paid, and he should not be mulcted in the additional amount paid for participation. A further point was this: for an insurance now a sum in excess of what was paid to the *Albert* would have to be paid; that was to be capitalized; the liquidators proposed to deduct from that capitalized sum the two years' premiums not paid pending the winding-up; that deduction was not fair, for it was by no fault of the insured that he had not paid the two years' premiums.

Mr. *Walford* said he appeared for policy-holders in *Germany*, who desired the contention to be presented to the Arbitrator that no part of the contract had been performed by the company; the risk insured against was the contingency of death; the contingency had not happened; and therefore they should not be charged with any proportion of the premiums which they had paid, by reason of the possibility that the contingency might have happened. They said that the contract had been determined by circumstances beyond their controul, and that they ought to be treated as the company would have treated them if they had ceased to pay their premiums, that is, they would have lost every shilling of the premiums they had paid; therefore they said they were entitled to the return of the premiums.

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LORD CAIRNS :—No breach of the contract on the part of the company would have entitled the insured, if the company had continued solvent, to sue at law for a return of premiums; they might be entitled to damages; the damages might be assessed on various conceivable footings; but they could never have recovered the premiums entire.

Mr. *Caldecott* said he had appeared in

Griffith's Case, L. R. 6 Ch. 374.

The life was uninsurable at the time of the winding-up, and though it was still existing, the amount of premiums paid was in excess of the sum assured. He had no objection to the application of *Bell's Case* if it was held that, the life being uninsurable, the sum to be proved should be the whole amount payable under the policy, that being the amount that would have to be paid for a new insurance on the same terms. Another view was, that the insured should have a return of the premiums paid because they exceeded in amount the sum insured. There were difficulties in viewing the question as one of damages. It was a question of the distribution of assets. It was the case of persons contributing yearly to the establishment of a fund to be distributed among them according to the amount insured for. Therefore they should have repaid to them the amount of their respective contributions to the fund, that is, the premiums. However much difficulty might arise, an estimate must be made in each case according to the condition of the life at the date of the winding-up order.

LORD CAIRNS :—We are now in 1871; how are we to ascertain what was the condition of the life at the date of the winding-up order in 1869?

Mr. *Caldecott* admitted there would be great difficulty; but those who, as General *Griffith*, had been diligent enough to obtain evidence of the condition of the life at the time, would be in a good position. The Court, however, was not to be frightened by the difficulties of the case, but was bound to do its utmost, and put the matter in course of inquiry to ascertain, as far as it could be done by evidence, the value of each policy according to the condition of each life at the date of the winding-up order.

LORD CAIRNS:—Still, is it not a proper way to test the validity of any scheme that is proposed, to consider how far the scheme is practicable? LANCASTER'S
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Mr. *Lattey* (solicitor) stated that he had acted in *Bell's Case*, and that it was there decided, with regard to Indian policies, that Mr. *Bell* would be entitled to have a policy permitting him to go to *India* as his original policy permitted (there being classes of policies which, bearing a higher rate of premium, gave a right to come to *England* and return to *India*); and he submitted that that part of the decision should be adhered to.

Mr. *Burton* (solicitor) stated that he had acted in *Craig's Case*, L. R. 9 Eq. 711.

At the date of the winding-up order Mr. *Craig* was ill, and his life was uninsurable; he had since died. The line must be drawn at the date of the winding-up order. Then it would have to be determined what was the value at that date of a policy on the life of a man who was then mortally ill.

LORD CAIRNS:—Is not that the ordinary case of a life uninsurable at the date of the winding-up order? Can a life be worse than uninsurable?

Mr. *Burton*:—The value of the claim would be the full amount of the policy, deferred only for the two months between the presentation of the petition and the order, and subject to no payment of premium.

Mr. *Kennedy* (solicitor) stated that he held a policy on his own life, and that he was in the position of having evidence to prove that his life was uninsurable at the date of the winding-up order, and continued uninsurable, and submitted that he was entitled to the full amount of the policy, subject to deduction of the number of premiums he might have been liable to pay.

Mr. *Higgins*:—The question in *Craig's Case* has been a source

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of great difficulty in many liquidations. The Vice-Chancellor, in *Craig's Case*, laid down, having had a discussion on the point before him, that the time for the valuing of the claim in each case was not the date of the commencement of the winding-up, nor the date of the order to wind up, nor the date of the adjudication on the claim, nor the date of the happening of the event, but the date of the bringing in of the claim. That would give rise to this very inconvenient result, that in all such cases, in every winding-up, persons might postpone their claims.

LORD CAIRNS:—All that a policy-holder would then have to do would be to watch the proceedings in the winding-up, and, if the life dropped before the conclusion of the proceedings, practically he would be insured for the whole time.

Mr. *Higgins*:—That decision seems to require re-consideration.

I submit, on behalf of the capital of the fund, that is, the general body of policy-holders, that there ought to be one uniform rule, that the rights of every claimant should be determined as at the date of the order to wind up; that is the date fixed by rule 25 of the General Order, as distinguished from the date of presentation of the petition, from which, under the Act, the winding-up commences.

LORD CAIRNS:—The Act carries back the date in order to overreach anything improperly done in the meantime. It does not suspend the action of the company as regards proper transactions. All proper transactions are protected.

Mr. *Higgins*:—That is, no doubt, a very good reason for having two dates.

With respect to Mr. *Mackenzie's* suggestion of injustice in the question of the two years' premiums, the answer is, that if the liquidators pay the reinstatement value, that will be greater by reason of the delay, and therefore they should have the two years' premiums.

LORD CAIRNS:—These complications all arise from the wrong date being taken. If the date of the order to wind up is taken, this question does not arise.

Mr. Higgins :—It is plain that we must have the two years' premiums, or else the proof must be as at the date of the order to wind up, and not as at a date subsequent by two years.

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With respect to section 158 generally, the difficulty of arriving at a just estimate lies in determining whether or not there should be one general rule applicable to all cases, or a general rule subject to exceptions, and then what those exceptions should be. The solution might be to lay down a general rule, and to say that every person should come within it, unless he could shew special circumstances; thus leaving it open to any person whose life can be shewn to be uninsurable at the date of the winding-up order to come in and prove the fact, the burden of proof being put on any one claiming to be in an exceptional position.

LORD CAIRNS :—What has the question of the uninsurability of the life to do with the Act? We know as a fact there are other insurance offices; we may know, as a matter of fact, whether a particular life tendered to another office would be accepted or not; but suppose there were no other insurance offices. Must you not consider the case against the particular company under the Act, without reference to the existence or non-existence of surrounding companies, or what they may do or not do? There is another view which may affect you as representing the company at large; that is, whether, unless one is positively driven to it by the wording of the statute, there must be an internal investigation as to the value of each particular life in the case of a company that is insolvent; whether that would not be a cruelty to every person concerned. The solution of such a question might cost a great deal more than the assets of the company.

Mr. Higgins :—There is another element to be taken into account, the probability of lapses. A person claiming on a ten years' policy is assumed to have a claim on the footing of a continuing policy, whereas he might have allowed it to drop the very next year. Statistics shew that policies of considerable standing lapse. This is an instance of a vast number of questions that might be suggested, which cannot possibly be solved.

LORD CAIRNS :—The real point is as between the two general

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principles, the principle of damages, regard being had to the particular circumstances of each particular case, on the one hand, and the principle of a uniform valuation of the claims on the other hand.

Mr. *Higgins*:—On behalf of the general body, it is submitted that it is not a claim for damages. If, while a company are a going concern, the fund is not sufficient to pay a claim that has actually arisen by the falling in of a policy, then, according to

King v. Accumulative Company, 3 C. B., N.S., 151, an action for damages would not lie. It would be a good answer to such an action to say there is no fund. This is illustrated by section 21 of the Act of 1870 relating to life assurance companies. If the directors of a company after a policy had fallen due were to say: Having regard to our contingent and prospective liabilities (to use the words of that section) we are insolvent, and therefore ought not to pay this claim,—there would be no right of action on the part of the policy-holder against the company, and no breach of contract, because the contract is in respect of a fund. The only question would be whether that fund was sufficient to answer all the obligations of the company. Therefore it simply comes to a question of administration. The operations of the company cannot be continued; there is a fund out of which the engagements of the company ought to be answered; there is no right to claim on the footing of damages; therefore, the value of the claim is to be estimated according to the policy, or the contract with the company, and not by reference to intervening circumstances, or to any alteration in the condition of the life one way or the other. These principles are illustrated by

McIver's Case, L. R. 5 Ch. 424.

Evans v. Coventry, 5 De G. M. & G. 835.

A reply was not called for.

Judgment reserved.

July 21.

LORD CAIRNS:—This case was brought before me for the purpose of determining the mode of ascertaining the amount of proof upon policies and annuities.

This is a question of considerable difficulty. I should have been very glad if I had found that any principle had been adopted by the Court of Chancery in the course of the winding-up which would have been applicable, on satisfactory grounds, both to policies and to annuities, and which therefore I could have followed without any further examination. I have been unable, however, to satisfy myself that any principle has been adopted by the Court of Chancery which will apply on sound and clear grounds to the cases of policies and of annuities, and which would, in my opinion, be consistent with the enactments of the Act of 1862.

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In considering the question I have to deal with the case, and only with the case, of those life policies and annuities which were actually current at the date of the winding-up. Where instalments of an annuity had actually become payable, or where a life policy had actually become payable, before the date of the winding-up, there no question as to valuation arises. The claim would be admitted for the actual sum that ought to have been paid before the winding-up. I have to deal with those cases only where the policy or the annuity contract was current at the date of the winding-up.

There are in some or all of the companies other contracts of a more special kind—for instance, endowments and contracts of survivorship—but the general observations will apply, with an alteration of detail only, to those cases.

I take first the case of an annuity contract. The contract in that case is of the most simple kind; it is a contract to pay half-yearly or yearly an annuity to the annuitant so long as the annuitant lives. In the case I have supposed there is no breach of contract at the date of the winding-up, and there being no debt at the date of the winding-up, the case falls within section 158 of the Act of 1862. Coupled with that there is to be taken the 25th rule of the General Orders issued under the authority of the statute. In this case we have, therefore, to deal with what may be termed a debt *solvendum in futuro*, to be paid year by year so long as the annuitant lives. There is no uncertainty in the amount that will have to be paid. There is no question of damages. There is nothing directed by the Act to be taken into account with regard to any peculiar damage to any particular individual by reason of the non-payment of his annuity, although the non-payment of an annuity to one

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person may be a much more serious and inconvenient thing than the non-payment of it to another. What the Act directs to be ascertained is, the value of the annuity as the thing of itself capable of valuation, without any reference whatever to the circumstances of the person who is to receive the annuity. The only question, therefore, is as to the scale and manner of valuation. I find, with regard to annuities, that in some of the companies absorbed by the *Albert* valuations have already been made by the Court of Chancery, founded on the tables of the company granting the annuity. These valuations have, however, not been made, as at the date of the winding-up order, according to the General Order, but have been made at a date subsequent, either on the bringing in of the claim or on some other day subsequent to the winding-up order. In my opinion, so far as regards the mode of valuation and the scale of valuation, this principle is correct, but the time at which the valuation is made is, in my opinion, wrong. It is obviously a fair and proper mode of valuation when you can find the tables of the company which has granted the annuity to take those tables as the basis of valuation. It is a right thing, if a person is to be reimbursed, as it were, the value of his annuity, that the value should be ascertained on the same scale on which the annuity was originally granted and paid for. The result, therefore, with regard to annuities is that, in my opinion, in every case a valuation of the annuity must be made as at the date of the winding-up order, according to the tables of the company originally granting the annuity, and where those tables cannot be ascertained (which possibly may be the case in some of the minor companies), then according to the tables, which after consideration I have thought the best one to adopt, the tables called the Government Annuitants' Experience Tables, taking four per cent. as the rate of interest.

I now come to the case of policies of insurance. I take at present whole-life policies. I may repeat shortly what I have often had occasion to say here. What is the nature of the contract of insurance? It is a contract by which the insured is under no obligation to pay the premiums, by which the company insuring are under no obligation to continue their business, but by which the

company undertake that if the person insured will pay the fixed premiums from year to year, the funds of the company for the time being, including the unpaid capital, shall be answerable in proper order to pay the sum insured, on the falling of the life and on proper proof of that event being given to the company.

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That being the nature of the contract, it is to be observed in the first place, that at the date of the commencement of the winding-up, taking it distinctly as at that moment of time, there is no breach of the contract. I have said that where the life has dropped before the winding-up, a policy of that kind stands in a different position; it is an actual claim for the whole amount. It is also to be observed that we have here to deal not with the case of a going company being sued for a breach of contract. Indeed, it is very difficult to see in a case of a policy of insurance, how there can be any breach of contract short of a refusal to pay on the falling of the life. I know it has been suggested that a refusal to receive the premiums from year to year would be a breach of the contract, and that thereupon an action might be brought. I do not desire to express any opinion on that point, but it is somewhat difficult to see how such an action could be maintained, and certainly, as far as I know, no such action has ever been maintained. But all that may be set aside here, because, whether an action could or could not be maintained for a refusal to receive the premium, I repeat that at the date of the commencement of the winding-up, even in that sense, there was no refusal to receive the premium, and therefore, no breach of contract. If, however, a going company were sued for a real breach of the contract, that is to say, for non-payment of the sum insured, there again it is difficult to imagine how there could be any damages other than the amount which was covered by the policy, which ought to have been paid. In the case with which I have to deal it is only, as it seems to me, under the operation of section 158 and the 25th rule that policies current at the date of the winding-up can be provided for, and claims in respect of them entertained under the winding-up, at all. I should have thought but for an authority in the Court of Chancery, which I shall presently refer to in detail, namely, *Bell's Case*, the course pointed out by this section and this rule was clear. It is well known what putting an estimate on the value of

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a policy of insurance means. Persons may differ as to the tables by which the valuation is to be made, or as to the rate of interest to be taken, but the way in which the value of an insurance is to be estimated is a thing perfectly well known, and the thing is attempted and succeeded in every day; and I should have thought, but for the decision to which I have referred, the course under section 158 and the 25th rule was a clear one, and as simple as any somewhat difficult problem of arithmetic could be made.

The effect of the decision in *Bell's Case*, however, as I understand it, is this. The Court there held that this mode might be adopted of valuing a policy. You might select another company with premiums the same as the *Albert*, with capital and guarantee proprietary fund as nearly as possible the same as the *Albert* had, or at all events professed to have. You might then go to that company and find for what premium that company would now insure the life of a person insured in the *Albert*, after examining if necessary the state of health, and then, when you had found the premium which the person insured would have to pay to this new company at the present time, and had compared that with the premium he before paid for the same amount to the *Albert*, and had taken the difference between the two premiums, and had capitalized that difference, having regard to the expectancy of life, you would then have the amount which ought to be paid to the person insured to put him in as good a position as he would have been in if the *Albert* had not been wound up. Now, so far as that sum arises from the mere difference of age, introducing no other ingredient into the case, but taking, for instance, a person who was insured in the *Albert* at the age of 25, and who is to be re-insured in this supposed company at the age of 50, not looking at any difference in the state of health at one time and another, but merely looking at the difference of premium for a man of 25 and a man of 50,—so far as the decision was founded on those elements, the decision would have supplied not an inaccurate mode, although a somewhat rough mode, of arriving at an estimate of the value of the policy. If there was nothing more, then, I should have been willing to have followed that principle. But the difficulty I feel is in following the decision so far as it introduces into the case other elements, namely, the re-examination

and the consequences of the re-examination, or the non-examination, of the lives to be insured by the new company. Because the decision goes to this, that if the particular person whose life is proposed for re-insurance has in the meantime passed into a state of health which either makes him non-insurable or makes him insurable only on more disadvantageous terms than formerly, or if the life to be re-insured cannot be produced for re-examination, in all those cases the person insured is under some peculiar and special damage arising in his own particular case, a special and peculiar damage, separate from the question of the value of his policy; and, practically, provision is to be made out of the assets of the company for that peculiar and special damage.

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I have considered *Bell's Case* with great anxiety, as the decision of a judge for whose opinion I have the highest possible respect, and who appears in that particular case to have taken very great pains to give weight to all the arguments which were addressed to him in support of the different views that were then proposed to the Court. I will state shortly the reasons which make me unable to follow the part of the decision which I have last adverted to.

In the first place, I find (judging from the report) that neither in the arguments before the Court nor in the judgment of the learned Judge, was any reference whatever made to the section of the Act which I have mentioned, or to the 25th rule. In point of fact, the date of the winding-up order mentioned in the 25th rule was not taken at all as the date for valuation, but a period altogether different, namely, a period at the close of the time covered by the last premium that was paid. I cannot help thinking that if the section and the rule had been prominently brought before the Court, the Vice-Chancellor would scarcely have arrived at the conclusion he did in *Bell's Case*.

In the next place, in my opinion, the problem to be solved under the Act being the finding of a just estimate of the value of the policy, the special damage sustained by a particular individual has nothing whatever to do with the value of the policy. In the course of the argument I put a case that will illustrate sufficiently my meaning. Take the case of *A.* effecting an insurance on the life of *B.* *B.* is abroad. The object is that *A.* should be re-insured in a new company. The new company will say: You must produce

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CASE.

the life, so that we may examine him. He, being abroad, will not come at all ; or, being at a great distance from England, says : I will come home if you pay my expenses home, to be re-examined, and back again, which will cost £200. The question that occurs to my mind is, what possible equity can there be, in the distribution of assets, to make the other policy-holders pay this £200 (because it must be paid out of their money), in order to indemnify the particular policy-holder A. for the expense of bringing to this country the life that is to be inspected for re-insurance ? In point of fact, special damage seems to me to be a thing relating entirely to a different class of ideas from the class of ideas entering into the question of the valuation of a policy for the purpose of paying its value out of assets. Special damage would apply to the case I supposed some time ago, of an action brought against a going company for a breach of contract, in which case a jury might be directed to take into account the special damage done to the particular individual.

The next point in regard to *Bell's Case* which I have to observe on is this: the mode of valuation there adopted involves the question of what another company would think of the health of the person formerly insured in the company being wound up. Now, in the first place, that raises the inquiry not merely of what the state of health of the person now is, but retrospectively what the state of health of the person now to be examined was at a period nearly two years past and gone, as to which the state of health of any person must be merely a matter of speculation and conjecture. Further than that, it introduces not merely opinion evidence as to the state of health, which is never satisfactory, but opinion evidence of the worst possible kind, because it is to be the opinion evidence of another company, or of the officers of another company, who are not going actually, or may not be going, to insure the life ; for there is to be no obligation after all upon the other company to insure the life, and no obligation upon the person making the claim to insure himself in the other company. It is opinion evidence, then, which you have no means of checking, because the inquiry proposed by the Court is what would another company do if they were asked to insure the life. The only answer to that can be from the other company, that they would

either insure the life or not, or would insure it for such an additional sum, and from the very nature of the case that is evidence which cannot be controverted, because it is not evidence of a fact, but evidence of a merely speculative opinion.

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Further, the test proposed in *Bell's Case* substitutes a solvent for an insolvent company, and under the guise of attempting to put the person insured in as good a position as he was in before, the mode adopted would put him in a very much better position.

Then, this alone would be to my mind an insuperable difficulty in adopting the principle in *Bell's Case*: the principle of that case is not homogeneous with the mode of valuing annuities adopted by the Court of Chancery in this winding-up. Annuities are proposed to be valued precisely on the principle of taking the value of the annuity as a piece of property, and not on any question of special damage sustained by the annuitant. Therefore in dealing with assets, of which there must be a distribution between annuitants and policy-holders, and which ought to be distributed on homogeneous principles as between those two classes of claimants, the Court would be dealing with one class of claimants in one way and with the other in a perfectly different way, and instead of dividing the assets equitably would be dividing them inequitably.

I am therefore unable to follow the mode of valuation suggested in *Bell's Case*; and after the best consideration which I am able to give to the subject, and after fortifying myself with the best advice which I could procure from the best authorities, I have come to the conclusion that there must be what is termed and well known as a pure-premium valuation, as at the date of the winding-up order, the rate of interest assumed being 4 per cent., and the tables being the Seventeen Offices' Experience Tables. The principle will be adopted in this way. There must be determined on the one hand the present value of the reversion in the sum assured at the decease of the life, and on the other, the present value of the future annual premiums. The difference between these two sums represents the value of the policy. But the annual premium payable is divisible into two parts: first, the part which it is calculated will provide for the risk, called the pure premium; and secondly,

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the addition for office expenses and other charges, which is sometimes called the loading. The pure premium only is to be taken into account. The value of the policy therefore will be the difference between the value of the reversion in the sum assured, and the value of a life annuity of an amount equal to the pure premium.

The Indian policies will be valued on the same principles as the European. On Indian policies an extra premium is payable so long as the lives insured are in *India*, which is remitted on their return to *Europe*. This temporary extra premium is the equivalent for the increased mortality of the tropical climate, and will not be taken into account in the valuation.

The observations I have made have put out of the case altogether the question of any peculiar mode of valuation of profit policies. That I consider to have been properly dealt with by the Court of Chancery. The portion of the premium attributable to the sharing of the profits is altogether out of the case.

Solicitors for Mr. *Lancaster*: Messrs. *Gregory, Rowcliffes, & Rawle*.

Solicitors for *Albert*: Messrs. *Lewis, Munns, & Longden*.

LANCASTER'S CASE. (No. 2.)

Policy—Novation.

1871

June 1, 15.

Novation consequent on amalgamation established against a policy-holder, in the following circumstances: After the amalgamation he continued to pay his premiums to the agents through whom he had effected the policy, who were also his solicitors; for the first payment he was given a receipt of the transferee company in a form which stated that the liability of his assuring company, the transferors, had been taken by the transferee company, subject to the payment to them of all premiums payable under the policy for keeping the same in force; and on inquiring (through the agents, acting as his solicitors) from the transferee company in what circumstances the policy had been so taken, he was informed by the transferee company that the business of his assuring company had been transferred to them, in consequence whereof, they stated, they (the transferee company) were liable for the sum assured by the policy; and for the subsequent payments he was given and accepted receipts of the transferee company simply.

THIS was a claim by Mr. *Lancaster* (which had been pending in the Court of Chancery on an adjourned summons) to prove against the *Bank of London* on a policy, dated 9 April, 1858, issued to him by that association on his own life, for £5000.

Mr. *Milward*, Q.C., (Mr. *Rowcliffe* with him) was for Mr. *Lancaster*.

June 1.

Mr. *Eddis*, Q.C., (Mr. *Rodwell* with him) was for the *Bank of London*.

Mr. *Milward* contended that in the circumstances there was no novation. He mentioned

Potts' Case, L. R. 5 Ch. 118;

Fleming's Case, L. R. 9 Eq. 306;

Bartlett's Case, L. R. 5 Ch. 640;

Nunneley's Case, L. R. 5 Ch. 381;

Challis's Case, L. R. 6 Ch. 266;

Griffith's Case, L. R. 6 Ch. 374;

Spencer's Case, L. R. 6 Ch. 362.

Mr. *Eddis* was not called on.

Judgment reserved.

LANCASTER'S
CASE.
(No. 2.)

June 15.

LORD CAIRNS:—This is a claim by Mr. *Lancaster* against the *Bank of London* on a policy dated 9 April, 1858, on the life of the claimant. The policy was effected through Messrs. *Woodcock & Co.*, solicitors, of *Wigan*, the solicitors of Mr. *Lancaster*. They appear also to have been the agents in *Wigan* of the *Bank of London*, and, as I gather, the agents there of some other insurance companies. They effected for Mr. *Lancaster*, as I understand the evidence, about the same time, three policies in different offices, one being the policy with the *Bank of London* on which this claim arises.

The *Bank of London* and the *Albert* amalgamated in October, 1858. No circular is proved to have been sent to Mr. *Lancaster* on the subject of the amalgamation, nor is it proved to my satisfaction whether any or what circular was sent to Messrs. *Woodcock & Co.* There is reason to suspect, from what afterwards happened, that either Mr. *Lancaster* or Messrs. *Woodcock & Co.*, as his solicitors, had a circular on the subject, but in point of evidence it is not proved.

The receipt for the premium paid in 1859, the first premium payable after the amalgamation, namely, in April, 1859, is not produced by Mr. *Lancaster*. The history of the transaction attending the payment of this premium, and of the subsequent premiums, I must take from the evidence in the case. Mr. *Scott*, son of a partner in the house of Messrs. *Woodcock & Co.*, says in his affidavit:

A letter of credit for £333 13s. 8d. by Messrs. *Thomas Woodcock & Sons*, bankers, *Wigan*, on Messrs. *Barclay, Bevan, & Co.*, in favour of the *Bank of London Association* was sent to the said association by the said firm of *Woodcock, Part, & Scott*, in payment of the renewal premium on the said policy of £5000 on the life of the said *John Lancaster* for the year 1859, and of another policy in the same association on the life of Sir *Robert Tower Gerard*, and on the 22nd of April, 1859, the said firm of *Woodcock, Part, & Scott* received the following letter from the secretary of the said association:—

ALBERT LIFE ASSURANCE AND GUARANTEE COMPANY.

7, Waterloo Place, London,
21 April, 1859.

Sirs,—I beg to acknowledge the receipt of your remittance, value £333 13s. 8d., and in return have the pleasure to enclose the official receipts for premiums on life policies Nos. 6638 and 6887. I am, &c.

HENRY W. SMITH, Actuary and Secretary.

That is Mr. *Scott's* evidence of the letter that was sent by the company. The letter states that the writer inclosed the official

receipts for the premiums on the two policies. Those official receipts would therefore properly come from the possession of Messrs. *Woodcock & Co.*, or of Mr. *Lancaster*; they are fixed with the official receipt, whatever was the form of it at the time; but as I said, without imputing blame to any person, the official receipt is not produced by Mr. *Lancaster* or Messrs. *Woodcock & Co.* Then Mr. *Smith* takes up the narrative in his affidavit:

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3. The *Albert* for the first twelve months after the transfer thereto of the business of the *Bank of London* issued receipts on payment of the renewal premiums on policies effected with the said association in the form of that now produced and shewn to me marked 10.

The official receipt, the form of which is thus spoken to by Mr. *Smith*, is this:

ALBERT LIFE ASSURANCE COMPANY.

Received the day of the sum of pounds, being the premium for the renewal of policy number , in the *Bank of London*, on the life of , for twelve months from , 1859, the liability of the *Bank of London*, by reason of the death of the said , in respect of the sum of assured by such policy having been taken by the *Albert*, subject to the payment to them of all premiums and moneys now or hereafter to become due and payable under the same policy for keeping the same in force.

In my opinion, Mr. *Lancaster* or Messrs. *Woodcock & Co.* not being able to produce any other official receipt inclosed in that letter, this is evidence which ought to satisfy me that the official receipt in the form I have read was inclosed in that letter. Mr. *Smith* continues:

4. I find from the press copy letter book of the *Albert* from the 28th of March to the 23rd of April, 1859, that on the 21st of April, 1859, I signed a circular letter to Messrs. *Woodcock, Part, & Scott*, of *Wigan*, enclosing two receipts for premiums on policies, one of which policies was numbered 6638 and the other 6887; and I also find from the postage-book of the *Albert* for the corresponding period, that that letter is entered as having been posted on the day it bears date.

6. The renewal receipt on the policy numbered 6638, enclosed in the said letter to Messrs. *Woodcock, Part, & Scott*, was in the same form as the said receipt marked 10. It was torn from the counterfoil now produced, and shewn to me marked A., and was the next receipt to that marked 10 as aforesaid. I cannot at this distance of time say that I recollect the form of receipt enclosed in this particular letter, but, as stated in the third paragraph of this affidavit, I know that at that time the *Albert* issued receipts in that form, and as the said counterfoil appears in its proper place, I have no doubt whatever of the fact.

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(No. 2.)

Nor have I any doubt at all on that evidence. Then Mr. *Lancaster* is cross-examined, and he says in his cross-examination :

I cannot account for my not being able to produce the receipt for 1859. I am sure that I paid the premium to Messrs. *Woodcock*. I should pay it by cheque. My practice was to send a cheque by letter.—(Question.) When do you recollect first hearing of an arrangement between the *Bank of London* and the *Albert Insurance Company*?—(Answer.) I do not recollect, but I recollect a change in the form of the receipt, and I asked one of the house of *Woodcock & Co.* the meaning of it; he was not able to answer the question, but said that he would write and get information, and I have a recollection of hearing the correspondence read over, but I do not recollect the purport of the correspondence.

I think this is material, not merely for the purpose of making it extremely clear that a receipt in an altered form was sent, but also for the purpose of shewing that the attention of Mr. *Lancaster* was called to it, and that any act done by him afterwards was not an act done *per incuriam*, but was an intelligent act done by him on full deliberation and with the best advice, namely, the advice of his solicitors. Mr. *Smith* continues the narrative, and he gives the correspondence to which in general terms Mr. *Lancaster* had referred. He says :

7. On or about the 27th of April, 1859, I received from the said Messrs. *Woodcock, Part, & Scott*, a letter in the words and figures following :

Wigan, 26th April, 1859.

Sir,—Life policies, No. 6638, on life of *John Lancaster*; No. 6887 on life of *Sir Robert Gerard*. These policies were granted by the *Bank of London*. We observe that the receipts for the last premiums state that the policies have been taken by the *Albert*. Oblige by informing us, for the satisfaction of the assured, why and for what reason or under what circumstances same policies have been so taken by the lastly above-named company.

On the 28th of April, 1859, I, in reply to the said letter, wrote and sent to the said Messrs. *Woodcock, Part, & Scott*, a letter in the words and figures following :

28th April, 1859.

Messrs. *Woodcock, Part, & Scott, Wigan*.

Gentlemen,—I beg to inform you in reply to your letter of the 26th instant, that by virtue of a resolution carried *nem. con.* at a meeting of the proprietors of the *Bank of London*, held in October last, the business of such association was transferred to this company, in consequence of which the *Albert* is liable for the sums assured by policies 6638 and 6887 granted by the *Bank of London* office on the respective lives of *John Lancaster, Esq.*, and *Sir Robert T. Gerard, Bart.* I have the satisfaction of adding that, prior to such transfer, *Sir Robert* held a policy of the *Albert Company*, so that we may anticipate his acquiescence in the change. We shall be happy to indorse the policies in question with a certificate of our liability, or exchange them, as may be preferred. . . .

Now, nothing could be clearer than this, so far as the *Albert* were concerned, that they had intimated to Mr. *Lancaster*, through his solicitors, that they were proceeding to act on the assumption that they were liable on these policies, not by way of auxiliary or cumulative liability, but as the company who were insuring on the policies, and that they were receiving and giving a receipt for the premium on that footing. No remonstrance, no repudiation, was made on the part of Mr. *Lancaster*, or his solicitors. The premiums continued to be paid regularly from that time on the policies; and the form of the next receipt, that for 1860, was this:

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(No. 2.)

Albert Life Assurance and Guarantee Company. Policy No. 6638. Received the 11th of April, 1860, the sum of £151 17s. 6d. for one year's premium on £5000 assured on the life of Mr. *Lancaster*, from the 9th day of April, 1860, to the 8th day of April, 1861, both inclusive, according to the tenour of the policy.

WOODCOCK, PART, & SCOTT, Agents.

And in 1861, and subsequent years, the receipts are somewhat different in form; but they are receipts given by the *Albert*, with a note in the margin of the number of the policy, and other particulars.

The question then arises on what footing were these subsequent premiums paid to the *Albert*. The circumstances in this case differ from the circumstances in *Kennedy's Case*, but the principle I have applied there appears to me to apply to the case I have now to deal with. It was optional with Mr. *Lancaster* to embrace or to refuse the arrangement proposed to him. But he could not play both fast and loose; he could not go on paying the premiums which he was told were being received on the footing of the *Albert* being the office that insured him, and afterwards when the *Albert* got into difficulties turn round and say that he all the while was acting on the supposition that he was insured by an entirely different office, an office to which he was not paying premiums.

The only peculiar circumstance in the case to be noticed, which was referred to in the argument, is the attempt of Mr. *Lancaster* in his examination to shew that he retained in his own mind the liability of the *Bank of London*. And he states his view in this way; after saying, 'I have a recollection of hearing the correspondence read over, but I do not recollect the purport of the correspon-

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dence,'—that is, the correspondence between Messrs. *Woodcock & Co.* and the insurance office in *London*, he says,—‘but I remember asking the question’ (that is, of his own solicitors) ‘if that’ (that is to say, if the correspondence) ‘would release the original people who granted the policy.’ The question is extremely material, because it shews that Mr. *Lancaster*’s mind was alive at all events to the possibility of what was going on releasing the original insurance office, and the answer was, he says, ‘Oh, no.’ Now it seems to me, if Mr. *Lancaster*’s recollection is correct, that this is simply a statement of opinion coming from a solicitor to his own client. The solicitor, Mr. *Scott*, of the firm of Messrs. *Woodcock & Co.*, or whichever partner it was, had no right to make this statement merely because they had been agents of the insurance company to effect policies or receive premiums in *Wigan*. The footing on which this new arrangement was proposed it did not lie in the mouth of Messrs. *Woodcock & Co.* to communicate. They had in writing from *London* from the head office the terms, and the only terms, on which it was proposed to receive the premiums; it was not for Messrs. *Woodcock & Co.* to qualify them by any explanation they might put on them at *Wigan*. But I do not understand that was the footing on which these gentlemen were proceeding. Whatever they said to Mr. *Lancaster*, whether rightly or wrongly, they said as his solicitors, and he acted on that. Therefore I have the clearest case of persons, with their minds alive to the importance of the step that was being taken, taking that step deliberately. This I hold was in law an abandonment of the liability of the original insurer, and an acceptance of the offer to be insured in the new company.

Mr. *Lancaster*’s claim fails against the *Bank of London*, and he must rank against the *Albert*.

This case had been brought into the Court of Chancery by arrangement; therefore I treat it as a representative case, for the purpose of settling in the *Bank of London* this question.

Solicitors for Mr. *Lancaster*: Messrs. *Gregory, Rowcliffes, & Rawle*.

Solicitors for *Bank of London*: Messrs. *Paine & Layton*.

WERNINCK'S CASE.

Policy—Novation—Bonus—Mortgage.

1871

June 24.

Novation consequent on amalgamation established, in the circumstances, against a policy-holder, who, besides being in a position like that of the policy-holder in *Kennedy's Case*, received from the transferee company a notice of a declaration of bonus by that company informing him how the share of the profits pertaining to his policy might be applied, and acknowledged, without more, the receipt of the notice, the effect being that, in pursuance of the notice, the bonus was added to the amount assured when payable.

Position of mortgagee of policy with respect to novation.

THIS was a claim by Mr. *Werninck* to prove against the *Medical* on a profit policy, dated 26 July, 1850, issued to him by that society, for £200, on his own life.

Mr. *Werninck* received the circular relative to the amalgamation of the *Medical* with the *Albert*, and did not answer it, but thenceforth paid his premiums to the *Albert*.

On 23 July, 1863, Mr. *Werninck* received the *Albert* bonus circular of 1863, and by letter dated 21 August, 1863, he acknowledged the receipt of it, without more, and the sum stated in the circular (£4 19s.) was thereupon added to the amount assured on his policy as a reversionary bonus.

The policy had been shortly after its date deposited with *E. Morison* as a security for a debt, and remained so down to the date of the winding-up.

Mr. *J. W. Chitty* was for Mr. *Werninck*.

Mr. *G. O. Morgan*, Q.C., (Mr. *Lemon* with him) was for the *Medical*.

Mr. *Chitty* contended that in the circumstances there was no novation. He mentioned

Griffith's Case, L. R. 6 Ch. 374;

Spencer's Case, L. R. 6 Ch. 632;

Challis's Case, L. R. 6 Ch. 266.

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CASE.

He contended also that there was nothing to shew that the mortgagee assented to the change of office, and it was a question whether the mortgagor could assent so as to bind the mortgagee.

Mr. *Morgan* was not called on.

LORD CAIRNS :—It ought to be understood that a mortgagee has no separate rights in a case of this kind. He leaves the mortgagor to pay the premiums and keep up the policy, and if the mortgagor pays the premiums to the proper persons the policy is kept up. If, on the other hand, the mortgagor pays the premiums not to the proper hand but to another hand, and makes a new contract, the mortgagee is, of course, bound.

With respect to the claimant himself this case is clearer than those I have already decided. According to the principle of the cases I have decided, the receipt of the amalgamation circular by Mr. *Werninck* and his acting on the offers then made by paying premiums to the *Albert*, there being no protest against the arrangement proposed with him, would have entitled him, if the *Albert* had been in a prosperous condition, to have come forward and said he had accepted the offer made to him, and had testified his acceptance by paying premiums to the *Albert*. The case goes further here, and it is a case in which Mr. *Werninck* really can hardly make the contest he does consistently with good faith. Because not only did he get the circular, and pay the premiums to the *Albert* subsequently, but further he is communicated with on the footing of his being a policy-holder in the *Albert*, entitled to profits out of the *Albert*. He is told they have been set apart for him; he is told that any one of four courses may be taken, though one only is open to him, if he is a mortgagor, without the consent of the mortgagee. It is admitted that he acknowledged that communication, made no protest, did not tell the *Albert* that they were under a delusion in supposing that he had an interest in their assets; but by acknowledging it, and not being able or not choosing to point out any mode but the first of the modes proposed, he assented to the bonus being added to his

policy. It does not make the slightest difference whether he did that, or whether he took the bonus and put it into his own pocket. The case is clearer by many degrees than those I have already decided; and Mr. *Werninck* cannot rank as a claimant against the *Medical*, but must now only rank against the *Albert*.

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CASE.

It appears there was an arrangement in Chancery to treat this as a representative case. The costs will therefore be provided in the winding-up.

Solicitor for Mr. *Werninck*: Mr. *Roberts*.

Solicitors for *Medical*: Messrs. *Walker, Kendall, & Walker*.

1872
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 Feb. 28.  
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## RIVAZ'S CASE.

*Policy—Novation—Protest.*

Novation consequent on amalgamation established against a policy-holder, in circumstances similar to those in the *Whitehaven Bank Case*, notwithstanding objections to the amalgamation made by the policy-holder in conversation with an agent of his assuring company.

THIS was a claim by Mr. *Rivaz* to prove against the *Western* on a policy, dated 11 August, 1860, issued by that society on his own life, for £2000, with profits.

An affidavit was made by Mr. *Rivaz*, in which, after describing himself as of the city of *Manchester*, local secretary to a fire, life and marine insurance company, and stating the details of the policy, he proceeded as follows :

2. I was induced to effect this insurance in consequence of my knowledge of some of the directors and shareholders of the said company [the *Western*], and the confidence I had in their responsibility.

3. Some time about the latter end of 1865, or the beginning of 1866, I received notice that the business of the *Western Insurance Office* had been transferred to the *Albert Life Office*. I was much annoyed to hear this, inasmuch as I had private means of knowing, from my position as an insurance agent, and from information from my uncle, who was a director in a large life office in *London*, that the *Albert Office* was in a very unsound condition. I went at once to the branch office of the *Western Company* in *Manchester*, and saw the representative of the *Western Company*. I informed him that I refused to recognise the transfer so far as I was concerned as a policy-holder, and that I should only recognise the *Western Life Office*, and I protested as strongly as I could against the said transfer. I remember making use of the expression that it was impossible that the office could have the power to hand the policy-holders over to another office like a flock of sheep. I was, however, told by the representative of the said *Western Company* that I could do nothing, as the *Western Office* had power by their deed of settlement to effect the amalgamation, and that this did not get rid of their responsibility to their own policy-holders. This statement, however, did not alter my opinion, and I told him that I recognised the *Western Office* only, and held them responsible, and would have nothing to do with the *Albert Office*. I subsequently saw Mr. *Bidder*, the manager of the *Albert Company*, in *Manchester*, and stated to him that I declined to recognise the *Albert Office*.

He however paid the premiums and took receipts as in the *Whitehaven Bank Case*.

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Mr. *North* was for Mr. *Rivaz*.

Mr. *Cracknall* was for the *Western*.

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CASE.  
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Mr. *North* contended that in the circumstances there was no novation. He mentioned

*Bartlett's Case*, L. R. 5 Ch. 640.

Mr. *Cracknall* was not called on.

LORD CAIRNS :—Consistently with what has been decided throughout, I cannot allow this policy to rank except against the *Albert*.

The position of this gentleman is this : he is the secretary to an insurance company himself ; at all events a man of business, and he receives a letter, the circular so often referred to, in 1865. It is undoubtedly a circular which proposes to the policy-holders in the *Western* to become policy-holders in the *Albert*, and it enumerates to them the advantages which it is supposed will be derived from their taking that course. It is signed by the chairman of the *Western*, the deputy chairman, and the actuary. It attracts the attention of Mr. *Rivaz* ; it does not pass unnoticed ; he admits that it seemed to him to be a thing that required some step to be taken on his part. I should have thought the obvious course, indeed the only course, to be taken by him, if he had not intended to accept the transference of the policy, and if he had intended to make it clear that, after receiving that letter, although he might pay the premiums to the *Albert*, he would do it merely to keep alive the policy in the *Western*, his obvious course would have been to have answered the circular,—to have addressed to the *London* office, or the chairman, or the deputy chairman, or the actuary, or the secretary, at the *London* office, his protest, in whatever form it might be made, so that it might come before the persons who had communicated with him, and who were acting on the subject of the amalgamation. In place of that, his own statement is that he had a conversation with the representative of the *Western* in *Manchester*. He does not give the name, nor does he examine the gentleman ; and I do not think, if it became a question, I could attach much weight to that. I am willing to take it on his own statement. He went to this gentleman, as he says, and had a conversation with him ; he says that he protested against having

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CASE.

anything to do with the *Albert*. But that was a frame of mind from which he might have departed at any moment during the course of years which elapsed before the winding-up. I put out of the case his conversation with Mr. *Bidder*, because Mr. *Bidder* represented not the *Western* but the *Albert*. After that he pays the premiums to the *Albert*. He takes receipts similar to those in the cases I have had before me. The first receipt takes notice that the *Western* had been incorporated with the *Albert*; and then there are regular *Albert* receipts, with a memorandum in the margin or counterfoil, identifying the policy with the *Western* policy. It appears to me that, there being nothing more in the case than that, it clearly ranges itself under the other cases I have decided, the claimant not having adopted any course which was an approach to a protest of the same solemnity as the letter by which he had been addressed, a protest against paying premiums to the *Albert* on the footing of becoming a policy-holder in the *Albert*.

With respect to the last observation of Mr. *North*, in the forcible argument that he addressed to me, that if the *Albert* had been a prosperous company, and the *Western* an unsuccessful company, there would have been a case on the part of the *Albert* liquidator to repudiate Mr. *Rivaz's* claim against the *Albert*, I do not think there would. I think his case against the *Albert* would have been clear. I think he might have said: Here is your offer which I received; it was an offer that enabled me at any time to become a policy-holder in the *Albert*; it is true you have found out that I had a conversation at *Manchester*, in which I said I would have nothing to say to the *Albert*, with the representative of your office there; but I never answered your letter, I never repudiated it, and that left it open to me at any time to come in under the *Albert*; I went on paying my premiums to the *Albert*, and took their receipts; and the last payment I made, without any qualification, to the *Albert*, at their office in *Manchester*.

Mr. *Rivaz* must rank against the *Albert*. I do not think I can make him pay costs. There was something to be argued in the case.

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Solicitors for Mr. *Rivaz*: Messrs. *Bower & Cotton*.

Solicitor for *Western*: Mr. *Manning*.

## ANDREW'S CASE.

*Policy—Marriage Settlement—Trustees.*

1872

Feb. 28.

A policy-holder on his marriage assigned his policy to trustees; he continued to pay the premiums; he received a circular stating the amalgamation of his assuring company with another company, and holding out benefits to such policy-holders as should accept the liability of the transferee company; he thenceforth paid the premiums to the transferee company and took their receipts; the trustees claimed to prove against the transferor company: *Held*, that the claim was not maintainable.

THIS was a claim by Mr. *Robert Andrew* and two others, to prove against the *Western* on a policy dated 20 April, 1852, issued by the *Western* to Mr. *Frederick Andrew*, on his own life, for £2000, with profits.

Mr. *Frederick Andrew*, on his marriage, by deed dated 21 August, 1852, assigned the policy to Mr. *Robert Andrew* and two others on trusts for the benefit of his intended wife and of the children of the marriage. Notice of the settlement was given to the *Western*.

The circumstances relative to amalgamation circular, payment of premiums, and receipts, were generally similar to those in the *Whitehaven Bank Case*.

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Mr. *Horsey* was for the claimants, the trustees of the settlement.

Mr. *Cracknall* was for the *Western*.

Mr. *Horsey*:—The form of the settlement is peculiar. It is simply an assignment to the trustees of the policy and policy money; it does not contain any covenant. Therefore, there is no obligation on the assured or on the trustees to keep up the policy. Notice of the settlement having been given to the *Western*, the names of the trustees must be in the books of the *Western* as the holders of the policy. The trustees make an affidavit. They say they executed the settlement, but beyond doing that and giving notice to the *Western* they never in any way acted under the settlement, and they had no notice or knowledge of the amalgamation. There is also an affidavit of Mr. *Frederick Andrew*, who says

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he paid the premiums with his own money. In these circumstances the trustees were trustees of the policy simply. They had no duty to perform in respect of it. Novation must be a matter of contract, express or implied, and as it is denied that any notice of the amalgamation was given to the trustees, and as it is admitted that the bonus notices in the *Western* were sent to Mr. *Frederick Andrew* alone, there can be no implication of a contract between the trustees and the company for a change of office. Next, as the trustees have had no communication with the settlor respecting the policy since the settlement, there was no relation of principal and agent between them. The company had notice that the person paying the premiums was an entire stranger to the policy. Knowing that, they accept the premiums. How can it be held that they have made a contract of novation unless they shew that the person paying the premiums was in some measure the agent of the holders, or had power to bind them?

Mr. *Cracknall* was not called on.

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LORD CAIRNS:—This was a policy effected in the *Western*, and it was assigned by the policy-holder Mr. *Andrew* on the occasion of his marriage, and notice was given to the directors of the *Western* of the settlement, stating that it was a settlement by Mr. *Andrew* on trusts therein mentioned. Mr. *Horsey* says, that in the payments of premium, Mr. *Andrew* was not the agent of the trustees. I do not think he was. That is the difficulty of their case. To keep up this as a policy in the *Western* it was necessary to pay the premiums to the *Western*. The trustees clearly did not do that; they come here admitting that they have never paid the *Western* anything. I do not say a word about their being liable for not keeping up the policy with the *Western*; that depends on the trusts of the marriage settlement, with which I have nothing to do; if they are liable for any breach of duty by not paying the premiums to the *Western*, that is an affair between them and the beneficiaries. If they are not liable, that must be from the circumstance that the policy was one with regard to which it was intended, on the occasion of the marriage, that it should be in the option of the husband whether he kept it up or not, or where.



In that state of things, the trustees having paid nothing to the *Western*, either by themselves, or by their agent, and not being in a position to come and say they kept up this policy from time to time; the settlor, the original policy-holder, receives the circular from the *Western*, telling him of the amalgamation, and of the benefits which policy-holders will have by insuring with the *Albert*. He seems to have been persuaded by that circular; he ceases making the payments which would keep up the *Western* policy, and he makes the payments which will enable him to say that he is insured by the *Albert*. He makes them in the usual way, as in the other cases. It appears to me, that he has succeeded in getting a policy in the *Albert*, and that the trustees have no pretence for saying that he has kept up any policy in the *Western*. It will be for the trustees and beneficiaries to insist that the policy which he has substituted, as it were, with the *Albert*, is subject to the trusts of the settlement, and that any benefit coming from it they are entitled to.

I cannot say that the trustees were not justified in taking my opinion about it. I will not order them to pay costs.

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Solicitors for the Trustees: Messrs. *Dangerfield & Fraser*.

Solicitor for *Western*: Mr. *Manning*.

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CASE.  

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 Feb. 28.

HOLMES'S CASE.

Policy—Novation—Bonus—Protest.

In circumstances generally similar to those in the *Whitehaven Bank Case*, with the further circumstance that the policy-holder in correspondence with the transferee company appeared to have treated himself as a policy-holder of that company by inquiring respecting a declaration of bonus, novation established against the policy-holder, notwithstanding an endeavour to shew a protest by him against the amalgamation.

THIS was a claim by Mr. *Holmes* to prove against the *Western* on a policy dated 20 September, 1844, issued by the *Western* to him on his own life for £800, with profits.

Mr. *Holmes* had made an affidavit containing the following statements :

2. Some time in the month of August, or September, 1865, I received a printed circular, bearing date the 14th day of July, 1865, from the chairman, deputy-chairman, and actuary of the said society, therein styled the *Western*, informing me that the directors of the said society had, under the powers conferred by the deed of settlement, and with the unanimous concurrence of the shareholders, incorporated the business of the *Western* with that of the *Albert*.

3. On or about the 16th day of October, 1865, I wrote a letter addressed to the said society at their offices, 3, *Parliament Street, Westminster*, inclosing my cheque for £32 5s. 4d., in favour of *Arthur Scratchley*, Esquire, the then secretary of the *Western*, being the aggregate of the two sums of £27 5s. 4d., the year's premium then due on the said policy, and £5 for the interest on the sum of £100 I had borrowed from the society on security of a deposit of my policy with the society. I did not keep a copy of that letter, but I well remember that in said letter, 'I protested against being handed over to another company that I had no knowledge of,' and said 'that I had not heard of the amalgamation with the *Albert* until I had received the printed circular of the 14th day of July, 1865, and that I had not given my consent to it, and would not do so.' I got no reply to this letter, but received back from the said society a certain receipt for such premium and interest, bearing date the 17th day of October, 1865.

4. In the month of October, in each of the successive years, 1866, 1867, and 1868, I remitted the annual premium due to the said society on the said policy, and in each of my letters remitting a cheque for the same, I stated it was my policy in the *Western*.

The receipts were like those in the *Whitehaven Bank Case*.

Mr. *Everitt* was for Mr. *Holmes*.

Mr. *Cracknall* was for the *Western*.

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Mr. *Everitt* relied on the affidavit, as shewing a protest on receipt of the amalgamation circular.

Mr. *Cracknall* was not called on.

LORD CAIRNS :—I do not think this gentleman has kept alive his right against the *Western*.

I should be very slow in any case to act on a statement now made, after all this question has arisen and been dealt with for the last three years, a statement made from memory of the contents of a letter not forthcoming, written in 1865. I doubt very much the memory of any person being sufficiently good for him to be able to set forth in a minute way, by words, the contents of a letter written so long ago, of which there is no copy. But I find this gentleman's memory is treacherous to a very great degree in these very matters; because in the next sentence in his affidavit he makes a statement, made at a time when he was not aware that the letter to which he refers was preserved, but which when the letter is produced appears to be erroneous. He says :

In the month of October in each of the successive years 1866, 1867, 1868, I remitted the annual premium due to the said society on the said policy; and, in each of my letters remitting a cheque for the same, I stated it was my policy in the *Western*.

We have the letters here for the years 1866, 1867, and 1868, and there is no statement of that kind in them. They are letters written to Mr. *Easum*, the officer of the *Albert*, as if it was a matter of course to write to him, that of 1867, for instance, inclosing to him a cheque for

£32 5s. 4d., being the amount of premium on life policy and loan, receipts for which you will please forward in course,

not adding a word of any kind to indicate that this was anything other than the ordinary payment to the *Albert*, on a policy the premium on which became payable in due course in that company. Therefore, in the face of that great mistake in the affidavit, I cannot accept the recollection of this gentleman as to the contents of his former letter.

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In addition to that, I must say I look with a good deal of doubt on the second paragraph in the letter of 1867 :

Will you please at the same time inform me the amount of bonuses on said policy which have been declared on it up to the present, and when the next will take place.

This gentleman had received the circular of 1865. That circular said that, on the occasion of the amalgamation, it had been decided by the directors of the *Western* to make no division of profits, to declare no bonus, up to 1864, for which time it appears that otherwise there would or might have been one, but to wait for the bonus at the time it would be declared in the *Albert* after 1867, they promising certain benefits at that time to persons who became insured in the *Albert*. It looks very much as if that had been in the mind of the writer when he used this expression ; and it is strange, if he thought he was a policy-holder in the *Western*, that he should have rested satisfied with the cessation on the part of the *Western* to declare any bonus after the writing of that circular.

I think his claim fails against the *Western* and he must rank against the *Albert*.

Solicitor for Mr. *Holmes* : Mr. *Saxton*.

Solicitor for *Western* : Mr. *Manning*.

WARNE'S CASE.

Policy—Novation—Protest—Days of Grace.

1872

Feb. 28.

In circumstances generally similar to those in the *Whitehaven Bank Case*, novation established against a policy-holder, notwithstanding that he had on more occasions than one successfully insisted on being allowed by the transferee company the number of days of grace allowed by his assuring company, the transferors, being a larger number than that allowed by the rules of the transferee company.

THIS was a claim by Mr. *Warne* to prove against the *Metropolitan Counties*, and, that failing, then against the *Western*, on a policy dated 10 February, 1854, issued by the *Metropolitan Counties* to him, on his own life, for £600, with profits.

Mr. *Warne* had made an affidavit containing the following statements :

8. Prior to the amalgamation of the *Western* with the *Albert* I received notice from the directors of the *Western* of the proposed amalgamation, but I took no notice of the circular. I have never taken any bonus declared either by the *Western* or the *Albert*, and I have not recognised either of those offices in any manner, except as agents of the *Metropolitan*, and I have always protested that such amalgamations were utterly ineffectual to affect or prejudice my original rights as a policy-holder against the *Metropolitan*. In confirmation of this I state the following circumstances.

9. In the month of February, 1866, I received a notice from the *Albert* that the premium on the £600 policy would become due on the 10th February, and that one calendar month was allowed for payment. As I have before stated, by the rules of the *Metropolitan* thirty days and not one calendar month was the time allowed for payment of the premium. The calendar month for payment of the premium on the £600 policy, according to the rules of the *Albert*, had expired on 10 March, 1866; but I, relying on the rules of the *Metropolitan*, which gave thirty days' grace, on 12 March, 1866, posted a cheque, dated the same day, for £22 12s. 3d., being the amount of the original *Metropolitan* premiums on the two policies addressed to the secretary of the *Albert*, in return for which I received two receipts for the premiums, dated respectively 13 March, 1866, without any comment.

10. The usual *Albert* notices of renewal on the two policies for the year 1867 were sent to me. On 11 March, 1867, I presented myself at the *Albert* with a cheque for £14 16s., to pay the premium on the £600 policy, when I was informed by the receiving clerk that it was too late, and that being beyond the date the office refused to take it. I, however, insisted that I had nothing to do with the rules of the *Albert*, my policy being a *Metropolitan* policy, and that the payment was within the rules of the *Metropolitan* and the terms of such policy. A clerk at

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the counter then took the cheque into the secretary's office, and on his coming out accepted my cheque and gave me the receipt, which was dated 11 March, 1867.

11. The same refusal was made in 1869, when I tendered my cheque for £14 16s., the premium for the same policy, on 11 March, which was refused as being beyond date, and thereupon I cashed the cheque and tendered the amount in cash, which was, after reference to the secretary, then accepted, and the receipt given to me bears date 11 March.

Mr. *Edmund James* was for Mr. *Warne*.

Mr. *Cracknall* was for the *Western*.

Mr. *James* contended that in the circumstances there was no novation. He referred to

Spencer's Case, L. R. 6 Ch. 362;

where Lord Justice *Mellish* said:

Mr. *Spencer* did not answer that circular; and I agree that he could not be deemed, from simply not answering the circular, to have assented to it.

LORD CAIRNS:—I quite agree with that view, that a person's not answering a circular is not to be deemed an assent. It is a different thing if he goes on and acts on the circular.

Mr. *Cracknall* was not called on.

LORD CAIRNS:—I do not think there is the least ground to distinguish this from the cases that have been decided.

I do not find this gentleman protesting in the sense in which the term ought to be used. He received the circular, took no notice of it in this sense, that he did not answer it, but acting on it, and relying on the promises in it, he paid his premiums from that time on to the *Albert*. On the occasion of the first payment nothing took place; it was simply a payment to the *Albert* in the ordinary way, and accepted by them. In 1867 and 1869 he was within the days of grace taken at thirty days, beyond the days of grace taken at a calendar month. Thirty days were the days of grace of the *Metropolitan Counties*. Then, having more favourable terms in his original company, he went to the *Albert*, and when they refused his cheque for his premium, he said: My policy is a *Metropolitan*

Counties policy. But I cannot allow him to put on these words the construction that he would have nothing to do with the *Albert*, or that this was meant for the first time as a protest against being supposed to be insured in the *Albert*, or having their liability. I take it to have been an observation made for the purpose in view, namely, insisting that they had not a right to refuse his cheque on the ground that the days of grace had expired. They clearly had not. The *Albert* were bound by their amalgamation agreement with the *Western*, and by that of the *Western* with the *Metropolitan Counties*, to give as favourable terms as the original company. I cannot look on it as a protest.

As there were no points in this case to be argued, I cannot do otherwise than refuse the application with costs.

Solicitors for Mr. *Warne*: Messrs. *Allen & Son*.

Solicitor for *Western*: Mr. *Manning*.

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 Feb. 28.

## HOWELL'S CASE.

*Policy—Novation—Protest.*

In circumstances generally similar to those in the *Whitehaven Bank Case*, novation established against a policy-holder, notwithstanding an endeavour to shew a protest by him against the amalgamation; it appearing that on his going to the office of the transferee company and making objections to the amalgamation, it had been stated to him by officers of the transferee company that he had no alternative but to pay his premiums to that company, unless he chose to let his policy lapse, and that by this statement his conduct was in effect determined, although he may have continued to be dissatisfied with the amalgamation.

THIS was a claim by Mr. *Howell* to prove against the *Western* on a policy dated 20 December, 1842, issued by the *Western* to him on his own life, for £300, with profits.

Mr. *Howell* had made an affidavit containing the following statements:

A few days after the receipt of such circular letter [that is, the amalgamation circular of 14 July, 1865], I called at the offices of the *Western*, but found them closed. Whereupon I proceeded to the offices of the *Albert*, where I saw a clerk whom I recognised as having been a clerk in the offices of the *Western*, and whose name I did not then know, but I have since ascertained that it is *Cabell*. I said to Mr. *Cabell*, 'I cannot understand this, that I am to be turned over from the *Western* office to the *Albert* office without being in any way consulted upon the subject, and without any notice.' [The rest of the paragraph is stated in the judgment.]

The payment of premiums and receipts were as in the *Whitehaven Bank Case*.

Mr. *J. D. Bell* was for Mr. *Howell*.

Mr. *Cracknall* was for the *Western*.

Mr. *Bell* contended that in the circumstances there was no novation; and that the case was distinguished from *Rivaz's Case* because Mr. *Howell* went to the principal office to protest.

Mr. *Cracknall* was not called on.

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LORD CAIRNS:—I have throughout these cases, which differ in certain shades from each other, been anxious always to find out a



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case where a person insured, when he got notice of one of these intended or attempted amalgamations, clearly made up his mind what he wanted, and then acted throughout in a way that did not enable him to play fast and loose. Because, unfortunately, it is too commonly the way of the world, to which we are all more or less subject, not to take a great deal of trouble, sometimes even in our own business, but to leave it in a loose form, without clearly knowing ourselves, or putting before those with whom we have to deal, the precise aim we want to accomplish. It is a thing which every one is subject to. More especially, one can easily imagine such a state of mind when the responsibility of two companies is proposed to a man as his insurers, and he has to make an election on a subject which after all he does not perhaps know much about, the relative solvency of the two companies. There is in all these cases a tendency to stave off the necessity of making a clear and distinct election if it can be done, to keep the thing in suspense if it can be done, to hold to both if it can be done; if it cannot, then to wait and see what the event is before a determination is made.

If I had found that this gentleman on receiving this circular clearly had determined in his own mind not to deal with the *Albert* as the company to be liable to him, and had continued to deal with the *Western* as the only one liable to him, and that, having thus determined, he had acted in a manner consistent with that determination, I should have been glad to find it so, as he would have been a creditor of a company which could pay him more money than the *Albert*. But I do not find that to be the case. I take every word of the conversation stated in his affidavit to be true, and it seems to me that the conversation is against him. He says he went to the *Western* office and found it was closed. He then went to the *Albert* office; he saw Mr. *Cabell*, an officer whom he had known in the *Western*. His statement to him was, he objected to being turned over from the *Western* to the *Albert*. He therefore knew what was being attempted. He says:

Mr. *Cabell* replied, 'You cannot help yourself; there is no claim on the policy until after death. You can, of course, let your policy lapse, but then you will get nothing,' or words to the like effect.

Whether Mr. *Cabell* was right or wrong, nothing can be more

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clear than the statement made to the claimant: This thing has been done; you are turned over to the *Albert*, and you cannot help yourself; you have to pay the *Albert*, or your policy lapses. The question now is, not whether that was a right view, but what it was that passed between Mr. *Cabell* and this gentleman, and what were the ideas that were conveyed to his mind by Mr. *Cabell*. He goes on:

I replied that I had insured my life in the *Western* office after due inquiry and consideration, and that I could not understand how one office could transfer or sell its policy-holders to another office like a flock of sheep, and I told Mr. *Cabell* that I should expect some further and more satisfactory explanation. Whereupon Mr. *Cabell* went away, and immediately afterwards brought forward some other gentleman, whose name I do not know, but who appeared to be some one in authority at the *Albert* office. Mr. *Cabell* explained to this gentleman what I had called about, and I also told him that I protested against my policy being transferred from an office, the directors of which I knew and had faith in, to another office, of which and its officers I knew nothing. The gentleman in reply stated, 'We have bought this business,' whereupon I repeated that I protested against the transfer being made without my consent, on which the gentleman observed that I had no alternative but to pay the *Albert* office, as there was no claim whatever on the policy until after death, but that I could, of course, if I wished, let the policy lapse.

Therefore, what he was told was this: You must pay the *Albert*, and paying them you will get the benefit of having a policy; if you do not, inasmuch as the *Albert* have bought the business, unless you pay the premiums your policy will lapse. Nothing can be plainer than that. That was the view that would be taken of the fact of his paying the premiums. I do not think that was a right view of the law, because by protesting in the proper form, as was done in some of the cases before me, and by paying the premiums on the footing, and the only footing declared at the time, with the view, that is, of keeping alive the *Western* policy, this gentleman would have thrown the burthen on the *Albert* of receiving the premiums in that character, or being obliged to refuse them altogether. But the question is not whether Mr. *Cabell's* theory was right in law or not; the question is, what was the idea which it carried to the mind of the person to whom he was speaking. And Mr. *Howell* says clearly: That was what was told to me; that was the view of those with whom I was dealing. In that state of things he takes no further step;

he goes on for that year and the remaining years paying his premiums to the *Albert* and taking their receipts in the ordinary way. Doing that, and being told at the time that was the only alternative he had, and that it was forced on him because the *Albert* had bought the business, and he had been transferred as a policy-holder to the *Albert*, I do not think he can go back on that after having submitted to it.

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It is very hard on the question of costs to distinguish between making the claimant pay costs and saying nothing about them; but as in so many cases to-day I have held that there was a shade to argue about, I must do the same with this, and say nothing about costs.

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Solicitor for Mr. *Howell*: Mr. *W. J. Scott*.

Solicitor for *Western*: Mr. *Manning*.

1872

March 13.

## BUDDEN'S CASE.

*Policy—Novation—Death Claim.*

Novation consequent on amalgamation established against policy-holders, in the following circumstances: They took receipts like those in the *Whitehaven Bank Case*; before the liquidation, on the dropping of the life, they made a claim on the policy, supported by documentary proofs, against the transferee company, which admitted the claim.

If an indorsement on the policy, stating that the transferee company, in consideration of having received the premium to induce them to renew what was originally a policy of the transferor company, agreed to renew the same for one year, would have created a liability in the transferee company alone; then the effect of a receipt for the premium on separate paper seems to be the same.

THIS was a claim by Messrs *Budden* to prove against the *Western* on a policy dated 7 April, 1865, issued by the *Western* to *A. W. Ord* on his own life, for £2000, with profits.

Mr. *Ord*, by letter of 11 April, 1865, in consideration of an advance of money, assigned the policy as security to Messrs. *Budden*, of which assignment notice was given to the *Western*. Immediately afterwards Mr. *Ord* went to *India*, and he continued out of *England* until his death on 13 March, 1869.

The claimants made an affidavit containing the following statements:

10. We did not, nor did either of us, ever receive a copy of the said circular [that of 14 July, 1865], and we never heard, nor did either of us ever hear, from the said *Augustus William Ord* that he had received a copy of the circular; and we did not, nor did either of us, ever hear of the circular until after the company ceased to carry on business; and except from the receipts given to us, we did not know, nor did either of us ever know, anything whatever of any amalgamation having taken place between the *Western* and the *Albert*, or of the said society and company having become incorporated, or of the terms and conditions on which such amalgamation or incorporation was made, and we first became aware of the fact of such amalgamation or incorporation, and the terms and conditions thereof, shortly after the *Albert* ceased to carry on business.

The payments and receipts were as in the *Whitehaven Bank Case*.

In the course of the hearing it was stated on behalf of the *Western*, and not denied, that before the liquidation a claim on

the policy on the dropping of the life had been made by Messrs. *Budden* against the *Albert*, and had been admitted; and the documents were produced.

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Mr. *Bristowe*, Q.C., (Mr. *Lawson* with him) was for the claimants.

Mr. *Cracknall* was for the *Western*.

Mr. *Bristowe*:—The first receipt after the amalgamation would be a receipt of the *Western*, if it were not for the words 'incorporated with' and so on, appearing on it.

LORD CAIRNS:—It is the same in effect as if the words stamped on in blue ink had been part of the original print in the body of the receipt.

Mr. *Bristowe*:—The evidence is that the claimants did not receive the amalgamation circular. The authorities in the Court of Chancery and in this Arbitration shew that if the case rests merely on the receipts there is not enough to create a case of novation:

*Bartlett's Case*, L. R. 5 Ch. 640;

*Pott's Case*, L. R. 5 Ch. 118.

*Pott's Case* being an annuity case is more strongly in favour of this claim; because there the claimant had gone on receiving from the *Albert*, giving receipts to the *Albert* for money. A man would perhaps look more closely to a receipt he was giving than to a receipt he was taking.

*Griffith's Case*, L. R. 6 Ch. 374,

was a case of novation on a policy.

LORD CAIRNS:—It is somewhat unfortunate, as I have had occasion to observe before, that the term novation has been used in cases on policies of assurance. The term may be proper enough in the case of the grant of an annuity. The term is borrowed from the Roman law, and rather implies a condition of things which springs out of the person who has got one contract and has a right to insist on it, without more, undertaking or agreeing to substitute for it another contract which is a new contract as regards the persons who are bound by it. All that may apply to the case of

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an annuity contract. In the case of a contract by policy of assurance you have got the preliminary, the most important thing, to consider—the act that is to be done by the person who holds the policy, namely, the paying the premiums. His contract, as an absolute contract, is only for the year, or the half year, covered by the premium he has paid. With respect to everything beyond that, the contract is conditional, and the sole foundation of his right is his paying the premium and paying it to the proper person. It is not a question of novation; it is a question of fact, did he pay the premium to the right person?

Mr. *Bristowe*:—One uses the term novation here rather because it has crept in.

LORD CAIRNS:—I do not object to it as a short expression, if we understand what it means.

Mr. *Bristowe*:—The important point is to see whether there was anything that came to Messrs. *Budden's* knowledge to shew that the payment of the premium was the inception of a new contract. If so, they must have been informed specifically of the fact, and the onus of informing them of that will be on the company. Then as between them and the *Western*, *non constat* the *Western* may not have constituted the *Albert* their agents for the purpose of giving these receipts.

In all the cases in the Court of Chancery in which it has been held that there was novation there has been some specific circumstance enough to shew that there was a new contract:

*Blood's Case*, L. R. 9 Eq. 316;

*Laycock's Case*, L. R. 9 Eq. 694;

*Heron's Case*, L. R. 5 Ch. 632.

There might be distinct accounts kept in the two offices shewing that our contract was a continuing contract, and that the *Albert* were bound by the amalgamation agreement to keep the two accounts separate and distinct, and that as between the two companies the assets of the *Western* were alone liable.

LORD CAIRNS:—*De facto* the premium was paid to the *Albert*. There is no doubt the *Albert* took the money, and intended to take

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CASE.

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it for their own benefit, not as agents for the *Western*. I am not speaking of what Messrs. *Budden* thought, or ought to have thought, but what was the fact. Beyond all doubt, the money was not paid to any agent of the *Western*, but to the *Albert*, and received by them in their own right. Your claim, therefore, against the *Western* must be of this character, that they misled you into paying to the wrong hand; that by representations, or otherwise, they led you to think that you were paying the *Western*, whereas you were paying some other body; and that although the *Western* have not had your premiums they ought to be held liable to you for the effect of their misleading you into paying somebody else.

Mr. *Bristowe* :—It goes somewhat further than that; because the original contract with the *Western* is, that as long as we in each year pay so much, they will at the death of the party pay so much.

LORD CAIRNS :—As long as you continue to pay *them* so much.

Mr. *Bristowe* :—We have continuously paid them the premiums, when we have done that which they themselves have told us to do by paying them through a third person. The receipts amount to a direction on their part that the *Albert* should receive the premiums and that they should recognise the *Western*.

LORD CAIRNS :—They told you only that the *Western* had become incorporated with the *Albert*. When company *A.* is incorporated with company *B.*, is not that a representation, whether it be right or wrong, that company *A.* is absorbed into company *B.*? What is the meaning of incorporation? You have paid a different person, that is quite clear.

Mr. *Bristowe* :—When that different person incorporates the other, it cannot be said strictly to be a different person; it may be more than the original person, but on the principle that the greater includes the less, the less would be part of the greater.

As in the Court of Chancery, so in this Arbitration, in every case there has been something more than the mere fact of receipts. In the *Whitehaven Bank Case* there was a circular, so in *Dale's*

**Budden's Case.** *Case*; and so in *Kennedy's Case*. In *Lancaster's Case* (No. 2.) there was a correspondence, equivalent to a circular.

There is a further consideration relating to the indemnity, as affecting the validity of the amalgamation as against those who had contracts with the *Western* at the time.

LORD CAIRNS:—I do not see how you can be concerned with the contract of indemnity between the *Albert* and the *Western*. You have a claim either against the *Western* or against the *Albert*. If it is against the *Western* you have nothing to do with the indemnity. If it is against the *Albert*, it must be on the footing of your having an *Albert* policy.

Mr. *Cracknall* was not called on.

LORD CAIRNS:—I do not regret that this case has been so fully argued, because the facts are slightly different from those that have occurred in the previous cases that have been before me. But it appears to me that there is nothing in the facts to take the case out of the class of claims against the *Albert*, and make it a claim against the *Western*.

If the case were launched simply on the documents produced towards the end of the discussion, it would be free from doubt. Here are gentlemen, Messrs. *Budden*, who claim to be entitled to a policy by assignment, and they commence their proceedings after the death happens by transmitting to the *Albert* the last receipt for the premium. That is a receipt from the *Albert Life Assurance Company*, 7, *Waterloo Place*, *Pall Mall*, acknowledging that there has been received for the renewal of a policy for six months a certain amount of premium, and signed by the manager of the *Albert*, in *Manchester*, by procuration. It is quite true that in the margin where the policy comes to be identified, the number is given, and it is called W. policy (which, of course, means *Western* policy), No. 10,527. That was quite a proper and natural way of identifying it, and was necessary to the transaction of business, regard being had to the fact that in point of form a *Western* policy never had been given up, and an *Albert* policy substituted. It was necessary to identify it in that way,



because the policy number would, *primâ facie*, have meant the number of a policy in the *Albert*. Messrs. *Budden* send in that receipt with the formal proof of death to the *Albert* and with this letter :

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CASE.

In reply to your communication of 25th March, respecting policy No. 10,527 on the life of *A. W. Ord*, under the peculiar circumstances of his death we are unable to fill the special form apparently required by your company, being simply holders by assignment of the policy. We, however, hand you the enclosed documents, namely: 1. Receipt for last payment of premium. 2. Certificate of baptism. 3. A document received from the *Peninsular and Oriental Steam Navigation Company*, embodying the captain's certificate of death, surgeon's certificate of disease and cause of death, and usual certificate of burial at sea. We trust that these will be sufficient for you to admit the claim and advise us to that effect after your next board meeting.

Any person reading these documents would say that is the simplest possible transaction: it is a claim against the *Albert*, referring merely for identification to the original number of the policy; not noticing the *W.* which identifies the policy as a *Western* policy; and dealing with the *Albert* apparently in their own right as to whether they would or would not be satisfied with the evidence of death. On those materials the claim was admitted by the *Albert*. All this occurred before the liquidation, and the right of action was perfectly clear and distinct in favour of Messrs. *Budden*, when the technical time had expired on 30 August, which would have been before the liquidation, for them to bring their action against the *Albert*. There would not have been a single word of defence. The *Albert* could not have justified in that action and have said: It is not the *Albert* assets that are liable, but the *Western* assets; this is an old *Western* policy; the *Western* assets are different; our assets as *Albert* assets are not liable; we defend the action on the ground that the *Western* have not got money to pay. The action would have been an undefended one as against the *Albert*.

It is not necessary to carry the case further, but I think it also right to say, after Mr. *Bristowe's* most able argument, that, finding the amount of knowledge which clearly existed in this case, an amount of knowledge communicated by the first receipt itself, that there had been the incorporation of the *Western* into the *Albert*, the *Albert* being the incorporating company and the *Western*

**BUDDEN'S  
CASE.**

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being the incorporated company, finding these receipts through a series of years, when all reference to the *Western* disappears, except for identification of the number and description of the policy, and the *Albert* give the receipt, I am unable to see how it is possible to put the case in a different form from that which it would have assumed if the same information, the same facts stated in that receipt, had been indorsed on the policy. If, as I suggested to Mr. *Bristowe*, the *Albert* had put an indorsement on the policy, saying: We, the *Albert*, in consideration of having received the premium of so many pounds to induce us to renew what was originally a policy in the *Western*, agree to renew it for a year: it would appear to me to be clearly a liability of the *Albert*. I cannot see what difference it makes that the statement which I have supposed is made not on the back of the policy, but on a separate form of receipt.

I think, therefore, on both grounds, the first of which alone would be sufficient, that this is a claim against the *Albert*, and must remain a claim against the *Albert*.

I cannot help looking at it as an attempt to shift the claim from the quarter where it was originally made to the other company, and therefore I must disallow the claim with costs.

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Solicitors for Messrs. *Budden*: Messrs. *Redpath & Holdsworth*.  
Solicitor for *Western*: Mr. *Manning*.

## ALLEN'S CASE.

*Policy—Novation—Bonus.*

1872  
 March 13.

Novation consequent on amalgamation established against a policy-holder, in the following circumstances: He did not receive notice of the amalgamation; he paid his premiums through an agent, by whom the receipts were sent to him, the later receipts being receipts of the transferee company simply; he received a bonus circular of the transferee company, and did not answer it, the effect being, as notified in the circular, that the share of profit of the transferee company pertaining to his policy was added to the amount assured as a reversionary bonus.

THIS was a claim by Mr. *Allen* to prove against the *Medical* on a policy, dated 19 September, 1851, issued by the *Medical*, at *Calcutta*, to him, on his own life, for £5000, with profits.

Mr. *Allen* had filed an affidavit, as follows:

I, *Charles Allen*, of . . . formerly a member of the Council of the Governor General of *India*, make oath and say as follows:

1. I am the claimant in respect of the policy for 50,000 rupees issued by the Indian Branch of the *Medical* dated the 19th of September, 1851, and numbered 2.

2. I never saw nor heard of any circular or advertisement as to an amalgamation between the *Medical* and the *Albert*, and I was up to the time of the winding-up order made in the matter of the said company in total ignorance that such a circular had been issued, or that any amalgamation between the said society and company had taken place.

3. I had observed changes in the form of the receipts for the premiums on the policy on my life, of which since the winding-up order my attention has been drawn particularly, but I never believed that these changes referred to any alteration in the position of the *Medical* to myself, and frequently after the time at which the first of such receipts bears date, I had interviews with Mr. *Tait*, who had founded the *Medical* branch in *Calcutta*, and who told me that he was managing the Indian business in this country (which I believed to mean the Indian business of the *Medical*), and on my asking when there was likely to be a second bonus, he told me that the society was flourishing, and that a second bonus would soon be paid, and it never occurred to me that there had been an amalgamation between the before mentioned society and company, so that my position as a policy-holder in the *Medical* had in anywise been affected, and Mr. *Tait* in no way ever mentioned to me that there had been any change in the state of the last mentioned society.

4. When I received the bonus circular referred to in the printed Case presented in the above matters and relating to my said claim [the *Albert* bonus circular of 1863], and which circular was headed Indian Medical Policy, No. 2, I believed that it referred to the second bonus which Mr. *Tait* had mentioned, and which

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the *Medical* had been expected long before to declare, and it did not in any way occur to me that it was a bonus out of profits made by the *Albert*; but that it was out of the *Medical* profits.

5. I have never done, nor have I ever been privy to anything, with the intention of transferring my claim on the said policy against the *Medical* to the *Albert*, or of altering my position as it existed between myself and the *Medical* previous to its connection with the *Albert*.

He had also filed the following affidavit :

I have never in any way consented to alter my position as a policy-holder in the *Medical*, and I never was informed, nor knew until the time mentioned in my said affidavit, that the said *Medical* had been amalgamated with, or formed a co-partnership with the *Albert*. I, by my agent, the *Oriental Bank*, paid the premiums to the *Albert*, in the belief that the *Albert* was in reality the *Medical* society under another name, and I never had up to the time of the order for winding up the *Albert*, any idea that the *Albert* was a distinct company with different rules, different shareholders, and different assets from the *Medical*, in which I took out the said policy.

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Mr. A. G. Marten was for Mr. Allen.

Mr. Lemon was for the *Medical*.

Mr. Marten contended that in the circumstances there was no novation. Mr. Allen did not acknowledge the receipt of the bonus circular. He simply took no notice of it. It had been held that where there was merely a circular sent, and not noticed, that was not binding.

LORD CAIRNS:—It depends on what the circular is. If a circular requires an answer, and is not answered, you may found an argument on that; but if a circular goes to a man who is expecting a bonus, and it says: There are different ways of applying your bonus; if we do not hear from you that you like to have it in a particular way, we shall apply it in such and such a way: if he does not answer that, he must take the consequences.

Mr. Marten:—As regards the onus being thrown on Mr. Allen by the change in the receipts to shew that the payment was properly made, this amalgamation is distinguished by this, that the agreement provides that the *Albert* should be the agents of

the *Medical* for the receipt of premiums where the change of liability was not accepted by the policy-holder.

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CASE.

Mr. *Lemon* was not called on.

LORD CAIRNS:—This gentleman admits that he received the circular with regard to the bonus. He does not suggest that he did not read it; he rather implies that he did. He does not suggest that he repudiated it; he rather implies that he accepted the bonus. But he puts this construction on it, that he thought it was a bonus coming from the *Medical* and not from the *Albert*. In point of fact he did not answer the circular. But that was one of the events that was contemplated on the face of the circular, namely, that it might not be answered, and the person to whom it is addressed is told that if it is not answered by a particular date the amount of the bonus will be added to the sum ultimately payable on his policy. He not answering that circular, which he was perfectly at liberty not to do, that course which he was informed would be taken was taken, and the sum mentioned in the letter was added to his policy, and has become permanently attached to his policy. Therefore, he is just in the same position as if he had received a certain sum of money out of the assets of the *Albert*; because the assets of the *Albert* have been made liable to pay to him the sum mentioned in the circular, and the circumstance that they would be so liable was stated in the circular, and the *Albert* would of course be unable to repudiate that, or to refuse, if they were solvent, to pay 20s. in the pound on the bonus so added to the policy.

Then how is the bonus, or the receipt of or dealing with the bonus, attempted to be got rid of by the claimant? He says this: When he received the bonus circular, he believed it referred to the second bonus, which he states Mr. *Tait* had mentioned, and which the *Medical* had been expected long before to declare; and it did not in any way occur to him, that it was a bonus out of profits made by the *Albert*; he thought it was out of the *Medical* profits. But can a gentleman be heard to say: I read over a letter, and I put just the opposite construction on that letter from that which it bears according to its plain expression? If a state-

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ment of that kind now made on affidavit, after the difficulty has arisen, when there is every motive to rank against the *Medical*, is to be accepted, Mr. *Allen's* claim must succeed; but I cannot deal with his statement in that way. I must look at the paper itself, and if it conveys fair and reasonable information to any one of what was being done, I must hold it to be sufficient.

This gentleman says he had observed changes in the form of receipts for the premiums on the policy on his life, to which since the winding-up order he says his attention has been drawn particularly. He had seen them before. The changes were extremely remarkable, because beginning with receipts in the proper form in the *Medical*, the next thing we find is that a change is made on the face of the printed form of the *Medical*, and made by pen and ink in a way to attract attention, putting '*Albert and*' before '*Medical*,' striking out the address of the *Medical* and putting 7, *Waterloo Place, Pall Mall*, and then in place of saying that the premium was paid 'according to the tenour of policy above-enumerated and issued on the life of *Charles Allen*,' which was the old form, there is this by interlineation, 'according to the tenour of policy above-enumerated issued by the *Medical, Invalid, and General Life Office*.' Then after two half-yearly payments, comes the printed receipt of the *Albert Medical and Family Endowment Life Assurance Company*, stating that the policy had been originally issued by the *Medical, Invalid, and General Life Assurance Society*. And then, after some more receipts in that form, there is another variation, and it is, '*Albert Life Assurance Company*,' where they drop the name of the *Medical*, and so it finally becomes the '*Albert Life Assurance Company, 7, Waterloo Place, Pall Mall, London*. Received per cheque for the renewal of policy mentioned in the margin,' and in the margin there is M. policy No. 2, with the sum assured.

At a time before the adoption of that final form of receipt, and when the penultimate form was in use, he having, as he says, observed those changes, gets the bonus circular. What is written in ink at the head mentions the policy in a way to convey to the mind of any one that it was mentioned for the sake of identification only. It is a circular from the *Albert Medical and Family Endowment Life Assurance Company*. It begins by saying

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CASE.  

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that there is a report annexed ; it is not merely annexed, but it is printed on the same paper in the most specific way, a regular report of the proceedings of a meeting of the *Albert* coupled with an advertisement of all the advantages of the *Albert Medical and Family Endowment Life Assurance Company*. The meeting goes into the question of the assets, leading up to the declaration of the bonus, showing how the bonus was to be applied ; and the circular is in accordance, asking the holder of the policy how he would like to have this bonus, which no person can doubt, on reading over the letter, is to be paid out of the assets of the *Albert*, applied. He knew it was the declaration of a bonus, but he chose to think it was a bonus out of the assets of the *Medical*. There would be an end to all safety in dealings between man and man if a person getting a plain and intelligible letter were afterwards to be at liberty to say: I thought it meant something perfectly different from what it obviously does mean. If the position of things had been reversed, and the *Albert* had been the prosperous and the *Medical* the non-prosperous company, the *Albert* would not have had a word to say in opposition to this claim.

I therefore refuse the application, and I must refuse it with costs.

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Solicitors for Mr. *Allen* : Messrs. *Norris, Allens, & Carter*.

Solicitors for *Medical* : Messrs. *Walker, Kendall, & Walker*.

1872

March 20.

## KNOX'S CASE.

*Policy—Novation—Bonus.*

Novation consequent on amalgamation established, in the circumstances, against a policy-holder, who, having paid his premiums to the transferee company and taken receipts of that company, on receiving a bonus circular of the transferee company answered it, and out of various alternative modes of application of the share of profit pertaining to his policy selected present payment, the bonus being paid to him accordingly.

THIS was a claim by Mr. *Knox* to prove against the *Anchor* on a policy dated 11 July, 1848, issued to him by the *Anchor*, No. 1130, on his own life, for £1000. The policy was treated by the *Albert* as a profit policy.

In September, 1857, came the amalgamation of the *Anchor* with the *Bank of London*, and in September, 1858, that of the *Bank of London* with the *Albert*. The Case agreed on stated that no notice of either amalgamation was given to Mr. *Knox*; and that he considered he paid the *Albert* solely as agents for the *Anchor*, acting on the principle that payment to *B.* by direction of *A.* was payment to *A.*; and by such payments he considered he was paying the renewal premiums of his policy in pursuance of his contract with the *Anchor* as set forth in his policy; and he submitted that the contract could not be varied and another contract substituted by his remaining neutral and paying his premiums (in order to preserve his policy) as directed to do by the parties originally entitled to receive them.

The following was the form of receipt given to Mr. *Knox* by the *Albert Company*:

Receipt No.  
An. Policy No. 1130  
on the life of  
*Charles G. Knox*.  
Premium £23 5s. 0d.  
Interest  
For 12 months  
From 11th July, 1860.

*Albert Life Assurance and Guarantee Company,*  
7, Waterloo Place, Pall Mall, London, S.W.  
Established 1838.

Received this thirteenth day of August, 1860, the premium for the renewal of policy mentioned in the margin hereof, the amount of which premium and the period for which it is received are also mentioned in the margin.

*Robert Whitworth* }  
*George Raymond* } Directors.



The Case stated that the body of the receipt referred to the KNOX'S CASE margin as to the policy to which it related, and the margin thus, by the number of the policy and the *An.* annexed, led Mr. *Knox* to suppose that the *Albert* were acting only as agents for the *Anchor*. The only bonus ever received on the policy was paid in September, 1863, through the *Albert*. Mr. *Knox* then and still believed that the bonus was paid out of the profits made by the *Anchor* policies. The bonus was received by him in pursuance of a circular sent to him by the *Albert* (the bonus circular of 1863) headed 'Policy No. 1130, on the life of *C. G. Knox*.' Mr. *Knox* filled up the blanks in the form inclosed, so that it read as follows :

I prefer the second mode stated in your circular of applying the share of profit pertaining to my *Anchor* Policy No. 1130.—£12 1s. 3d.

and returned the form to the *Albert* office, and the sum was accordingly paid to him.

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Mr. *Steward* (solicitor) was for Mr. *Knox*.

Mr. *Mercer* (solicitor) was for the *Anchor*.

Mr. *Steward* contended that in the circumstances there was no novation.

Mr. *Mercer* was not called on.

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LORD CAIRNS :—There really is nothing in this case to distinguish it from those that have been already decided.

The claimant, Mr. *Knox*, before the receipt of the circular with regard to the bonus, had been paying his premiums to and taking receipts from the *Albert*, receipts headed by the title of the *Albert*, and making the *Albert* the recipients of the premium ; and although there was a reference to the policy as an *Anchor* policy, by the letters *An.* in the margin, still that was a reference merely for identification, and not at all derogating from the force of the receipt as an *Albert* receipt.

Then a circular is sent to Mr. *Knox* from the *Albert* office, speaking of the bonus about to be declared or paid, and speaking of it in the clearest terms as a bonus derived from the profits and

KNOX'S CASE. trade of the *Albert*, giving Mr. *Knox* the usual option as to the mode in which that bonus might be applied for his benefit. He seems to have understood the letter, and he replied by selecting one of the various modes, namely, the mode of actual payment of the hard money to himself. The bonus was accordingly paid in the month of September of the year in which the circular was issued.

It appears to me that he clearly is in the position of a person who has received, with his eyes open, a bonus expressly stated to be out of the profits of the *Albert*; that, therefore, he has elected to be a policy-holder of the *Albert*, and has done nothing whatever that could keep alive his claim against the *Anchor*, against which he now wishes to claim, and that his claim therefore must be refused with costs.

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Solicitors for Mr. *Knox*: Messrs. *Clowes, Hickley, & Steward*.

Solicitors for *Anchor*: Messrs. *Mercer & Mercer*.

## GLAZEBROOK'S CASE.

*Policy—Novation—Bonus.*1872  
March 20.

Novation consequent on amalgamation established, in the circumstances, against a policy-holder, who, besides taking receipts in the same form as in *Lancaster's Case* (No. 2.), on receiving the bonus circular of the transferee company mentioned in *Knox's Case* did not answer it, the effect being, as notified in the circular, that the share of profit pertaining to the policy was added to the amount assured as a reversionary bonus.

THIS was a claim by Mr. *Glazebrook* to prove against the *Bank of London* on a policy dated 27 April, 1848, issued by the *Bank of London*, to him, on his own life, for £558 11s., with profits.

In 1858 came the amalgamation of the *Bank of London* with the *Albert*. The first two receipts thereafter given to Mr. *Glazebrook* were as follows :

Receipt No. 254.  
Policy No. 6674.  
Sum assured, £558 11s. 0d.  
On the life of  
*W. Glazebrook*.  
Premium £18 0s. 0d.  
For 12 months,  
From 5th May, 1859,  
To 4th May, 1860.

*Albert Life Assurance and Guarantee Company,*  
7, Waterloo Place, Pall Mall, London, S.W.  
Established 1838.

Received the 13th day of May, 1859, the premium for the renewal of policy in the *Bank of London and National Provincial Insurance Association* (the number of the policy and the amount of the premium and the period for which it is received being mentioned in the margin hereof) the liability of the *Bank of London and National Provincial Insurance Association* by reason of the death of the assured under such policy having been taken by the *Albert Life Assurance and Guarantee Company*, subject to the payment to them of all premiums and moneys now or hereafter to become due and payable under the same policy for keeping the same in force.

*J. Croudace,*  
*Geo. Raymond,* } Directors.

*Albert Life Assurance and Guarantee Company,*  
7, Waterloo Place, Pall Mall, London, S.W.  
Established 1838.

Received this 21st day of May, 1860, the premium for the renewal of policy mentioned in the margin hereof, the amount of which premium and the period for which it is received are also mentioned in the margin.

*J. Croudace,*  
*Wm. King,* } Directors.

Receipt No. .  
Policy No. 6674, *B. & N.*  
Sum assured £558 11s. 0d.  
On the life of  
*William Glazebrook*.  
Premium £18 0s. 0d.  
Interest, £  
For 12 months,  
From 5th May, 1860.

GLAZEBROOK'S  
CASE.

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Mr. *J. Chester* was for Mr. *Glazebrook*.

Mr. *Rodwell* was for the *Bank of London*.

Mr. *Chester* contended that in the circumstances there was no novation.

Mr. *Rodwell* was not called on.

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LORD CAIRNS :—I am somewhat surprised at *Knox's Case* and this case being brought before me, because they are entirely covered by several of the decisions that have already been given.

Here is a policy-holder who, the year after the amalgamation of the *Albert* and the *Bank of London*, has the most distinct notice from the receipt which is given to him, and which remains in his possession, of what had taken place between the two companies. That receipt states that the premium has been paid by him to the *Albert*, that it has been paid to the *Albert* for the renewal of a policy in the *Bank of London*, the number and date and amount of which are mentioned in the margin. But it does not stop there; it does not leave it open to suggestion that this money has been paid to the *Albert* for the renewal of this policy, because the *Albert* were the agents of the *Bank of London* to receive the renewal premium, but it states that the premium is paid to the *Albert* for this reason : because the liability of the *Bank of London*, by reason of the death of the assured, under the policy, had been taken by the *Albert*, subject to the payment to them of all premiums and moneys then or thereafter to become due and payable under the same policy, for keeping the same in force. I do not think any words could more distinctly state to the person paying the money the footing upon which the *Albert* were going to receive it. No person with the most moderate knowledge of the English language and of business affairs could doubt after reading this, that the money was paid to the *Albert* as principals and not as agents; that it was paid to them to keep alive that policy; but paid to them because they had taken the liability off the shoulders of the *Bank of London*, and put it on their own. It was quite open to this gentleman, when he saw that, to say : That is not what I want; that is not what I assent to; I am not going to surrender my right against the *Bank of London* of having a continuing policy of theirs, on

paying the premium to them for a fresh year ; I will not pay the *Albert* on this footing, and I withdraw my cheque or my money. He does not do anything of the kind ; he appears to be perfectly satisfied ; and in the next year he receives a receipt pure and simple from the *Albert*, for the renewal premium of the policy mentioned in the margin, giving the particulars of the policy in question, with *B. & N.* to identify it as a *Bank of London and National Provincial* policy.

Then, it does not rest there. That would be a strong case, and, perhaps, a sufficient case, for the *Bank of London*, if it had rested there. But, in process of time, a circular is sent to this gentleman, telling him in the plainest way, that a bonus in respect of this policy had been declared out of the assets of the *Albert* ; that there were four ways in which it might be applied ; and that if he did not select one of those particular ways by a particular date, the *Albert* would understand that he desired it to be applied in the first way. Silence would be treated by them as an assent to its application in the first way ; he was silent ; and in the first way they did accordingly apply it. He, therefore, is just in the same position as if he had actually answered the letter, and had taken the bonus in money into his hands out of the assets of the *Albert*.

His claim, therefore, must be refused with costs.

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Solicitors for Mr. *Glazebrook* : Messrs. *E. W. & R. C. Mote*.

Solicitors for *Bank of London* : Messrs. *Paine & Layton*.

1872  
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 April 24.

HAWTREY'S CASE.

Endowment Contract—Novation.

Novation consequent on amalgamation established, in the circumstances, against the holder of an endowment contract who had received the amalgamation circular holding out advantages to be derived by him from the amalgamation, and had brought in his contract to the transferee company, and had it indorsed by them with a certificate of their liability to pay the sum assured by the contract.

THIS was a claim by Mr. *Hawtreys* to prove against the *Family Endowment* on an endowment contract dated 2 March, 1843, entered into with him by the *Family Endowment*. It declared that in consideration of £15 14s. 10d. then paid by him, and in case he, his executors, administrators, or assigns should, on 1 March in every succeeding year until and including 1857, pay to the directors of the *Family Endowment* £15 14s. 10d., the funds of the *Family Endowment* should be liable, according to their deed of settlement, to the payment of £100 (together with an aliquot share of such further sum or sums, if any, as should be assigned to that contract pursuant to the rules of the *Family Endowment* by way of bonus or addition to the endowment thereby made) for every child of Mr. *Hawtreys* and his wife therein named thereafter to be born, who should live to attain the age of fourteen years. The endowments were made payable to Mr. *Hawtreys*, his executors or administrators, or such persons as he should authorize to receive the same, each to be paid within three months after proof of a child becoming entitled.

Mr. *Hawtreys* paid all the annual premiums required by the contract.

Mr. *Hawtreys* received the amalgamation circular of the *Family Endowment* with the postscript. He brought in his contract to the *Albert* and had an indorsement (stated in the judgment) put on it.

Payments in respect of children of the marriage attaining the age of fourteen were made by the *Albert* down to the time of the winding-up of the *Albert*. Other children of the marriage had since attained the age of fourteen. Mr. *Hawtreys* claimed under the contract to be entitled to prove against the *Family Endowment* for the

sums which had become payable thereunder in respect of the last-mentioned children, and of the several sums which might become payable thereunder in respect of any other children or child of the marriage.

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Mr. *Hawtreys* appeared in person.

Mr. *Rodwell* was for the *Family Endowment*.

Mr. *Hawtreys* contended, that his part of the contract having been discharged on 1 March, 1857; after that the directors and members of the *Family Endowment* were bound to do their part. The whole onus of keeping him harmless as against themselves, and providing for the payment of his claims, rested with them; so that, if for any ease, advantage, or convenience to themselves, it should at any time suit them to retire from their business, they were bound to make an arrangement with some other party to act for them in paying him those claims; and if that party, acting as their agent, should at any time fail to pay them, then the obligation to pay them reverted to themselves. He ought to have been made to understand that he had nothing to fear, and that, whatever might happen to the intermediate party, the *Family Endowment* were his acknowledged debtors, and he was safe. Further, if it suited their purpose that he should become the creditor of an intermediate party, instead of continuing to be their creditor, he ought to have been told expressly, in plain and unmistakeable language, on what terms, and under what arrangements, the obligation to pay his claims was to pass from the one party to the other, and that the option of remaining the creditor of the one, or becoming the creditor of the other, rested with himself. But the amalgamation circular was misleading. For the pretended contract embodied in the indorsement there was no consideration passing from him to the *Albert*. The *Family Endowment* made him do, and blindfolded him for the purpose of making him do, that which they now cited against him as an evidence of novation. Novation was said to be a doctrine of Roman law; this question should be considered under the light of the precept of Roman law which directed an estimate to be formed of the

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character, intention, and legal bearing of a fact by the inquiry *cui bono fuerit*, for whose advantage it was that the thing should be done. What advantage could it be to him to lose his hold on the *Family Endowment* and to accept for his debtor a strange company, which was bound to him by no obligation, to which he had paid nothing, and to which, for aught he knew, nothing had been paid by any one, for the large sums they would have to pay to him should his children live? To the *Family Endowment*, on the contrary, it would be a great advantage if he were led to accept another company for his debtor instead of them. There were on the part of the *Family Endowment* and its officers a reticence, an ambiguity, a concealment of facts, a duplicity of language, which were inexcusable, and which, if he were not allowed a claim against the *Family Endowment*, put them into the position of profiting by their own wrong. He had acted under a false impression, of which they were the cause. He had no intention of taking the *Albert* for his debtor instead of them, but felt thoroughly abandoned and deserted by them. He hoped, therefore, his claim against them would be allowed now that they had again been brought into substantial and responsible existence.

Mr. *Rodwell* was not called on.

LORD CAIRNS:—I feel very much for a gentleman who has expended a considerable sum of good money, as Mr. *Hawtreys* has, and who has got very little in return for it, I am afraid. At the same time I think the documents in the case are too strong for him to get over.

When the *Albert* took the business of the *Family Endowment* the *Family Endowment* issued a circular which is admitted to have been received by Mr. *Hawtreys*.

Mr. *Hawtreys* was not a policy-holder or the holder of a contract on which any premiums were any longer payable. He had paid the price for the endowment which he expected to receive; he was in the position therefore in which an annuity creditor places himself by paying the price in the first instance, and merely contracting to receive his annuity. If the case rested there, if Mr. *Hawtreys*

had done nothing more, his right against the *Family Endowment* would clearly have continued. No statement made to him in this circular would in the slightest degree have prejudiced that right; and the question which has arisen in many cases with respect to the effect of paying premiums to the *Albert* would not have arisen in his case, because he would have had no more to pay.

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CASE.

But what Mr. *Hawtreys* has said in the agreed Case, and in his statement to-day he confirms it, as to what took place, is this :

The said *Montague Hawtreys* inferred from the circular that the *Family Endowment* had placed him under the necessity of relying for payment of his claims upon the *Albert* ; and, being in *London* at the end of the year 1861, he called at the office of the *Albert* and inquired whether he was not to have some voucher from them that they would pay him his claims when they became due.

Now I cannot attach any meaning to these words but this, that by reading the circular it had come to be the impression on Mr. *Hawtreys*'s mind that the persons upon whom for the future he was called on—I will not put it higher than that—to rely for payment of his annuity were the *Albert*, and that being called on or invited to rely upon them for that payment he goes to the *Albert* office and asks them whether he is not to have a voucher from them that they would pay him his claims when they became due. That I understand to mean a voucher binding the *Albert* to pay those claims. The Case goes on :

It was replied that they could put an indorsement on his contract; and he was asked if he wished it, to which he answered that he did ; but he made no inquiry, and received no information, as to what the purport of the indorsement would be ; and accordingly the said *Montague Hawtreys* forwarded the contract of the 2nd of March, 1843, to the Secretary of the *Albert* for the purpose of having the indorsement made thereon of the liability of the *Albert* thereunder ; and accordingly the *Albert* caused to be indorsed thereon and signed by three of their directors a memorandum as follows.

The original policy is not under seal, it is signed by three directors ; and the indorsement also is not under seal, but is signed by three directors of the *Albert*. The indorsement is this :

It is hereby certified that subject to the within-named *Montague Hawtreys* abiding by and observing and performing the conditions contained in the within contract on the part of the said *Montague Hawtreys*, the capital, stock, and funds of the *Albert Medical and Family Endowment Life Assurance Company* shall, according and subject to the provisions of the deed of settlement of the same company, be liable to pay the sum assured by the within contract, whenever the same shall become payable under and by virtue of the conditions of such contract.

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CASE.

Now the observation is a just one (as far as I at this moment see) that there were no conditions to be actively performed by Mr. *Hawtreys* in the contract. But that would not interfere with the effect of the indorsement in other respects. It is a contract which subjects the funds of the *Albert*, which otherwise were not in any way subject to Mr. *Hawtreys*'s claim, to the payment of his claim when it became due. There is, therefore, of course, full consideration as between the parties for a new contract on this subject. There is the consideration passing to Mr. *Hawtreys*, of receiving as his security the funds of the *Albert*, which in the result might have been much more valuable than the funds of the *Family Endowment*. That indorsement was put on it, and I must say I think it is an indorsement which any person who reads it could understand. That is sent back to Mr. *Hawtreys*, and is accepted by him without any kind of remonstrance on his part; and then subsequently one of the payments becoming due to Mr. *Hawtreys* he writes this letter to the *Albert*:

The sum of £100 payable to me by the *Albert Medical and Family Endowment Life Assurance Company*, on account of my contract B. 781 with the *Family Endowment Society* is now payable, and I should be obliged to you to pay it into the hands of my bankers, Messrs. *Hoare, Fleet Street*, as I cannot myself attend at the office in *London* for the purpose of receiving it. As the printed instructions contained in the second half of your letter of the 23rd December do not apply to this case, I suppose there will be nothing more for me to do than to give an order on you for the money to Messrs. *Hoare*, but I wait for your answer before sending it.

That sum was paid, and a receipt given to the directors of the *Albert* for the money.

I entirely adhere to the principles upon which I have acted hitherto, and upon which the Court of Chancery had acted before, that in the ordinary case of an annuity creditor who had paid his consideration-money, and had nothing more to do, there could be no cesser of the liability of the company with which he originally contracted, merely from the circumstance that that company had aliened its business to another company. But here I have the case of a gentleman who, although he has paid all his premiums, is distinctly informed of the dissolution of the old company, and the assumption of the business by the new. He is told that the assets of the new company will be liable to his claims, and upon that

footing he takes in his contract for indorsement, and the indorsement I have read is put on it. If events had turned out differently from what they have; if the *Family Endowment* had been a company whose assets were deficient, and the *Albert* had been solvent; the *Albert* would not have had a word to say by way of defence on this state of facts to Mr. *Hawtrey's* claim against them. There was a complete new contract with the *Albert*, and that is the contract which—I regret to say it, because I am afraid it will be a much less valuable one to him—Mr. *Hawtrey* must abide by.

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I do not order him to pay costs.

Solicitors for *Family Endowment*: Messrs. *Markby & Tarry*.

1872
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 April 24.

## DORNING'S CASE.

*Policy—Novation—Protest.*

Novation consequent on amalgamation not established, in the circumstances, against a policy-holder, who paid his premiums to the transferee company under protest that he so paid in order to keep alive his claim against his assuring company, the transferors, the amalgamation agreement having provided in effect that the transferee company were to receive premiums on behalf of the transferor company in respect of policies which the holders did not consent to change for policies of the transferee company.

THIS was a claim by Mr. *Dorning* to prove against the *Medical* on a policy dated 30 December, 1850, issued to Mr. *Dorning* on the life of *M. Whittaker*, for £800.

The Case filed on behalf of Mr. *Dorning* stated that he regularly paid the premiums to the *Medical* through Mr. *Pennington* and Mr. *Knight*, their successive agents in *Manchester*, until 27 July, 1860. Between that time and December, 1860, when the next half-yearly premium became due, Mr. *Knight* called on Mr. *Dorning*, and told him, as the fact was, that the *Medical* had transferred their business to the *Albert*; and all premiums due in respect of the policy after December, 1860, were paid to Mr. *Knight* up to and including that which became due on 27 July, 1869. Mr. *Dorning* alleged that he had persistently on all occasions refused to recognise as his debtors any other parties than the *Medical*, who issued the policy; and in the events which had happened, and under the circumstances set forth in the affidavits, he claimed to be entitled to prove against the *Medical*, and not against the *Albert*, for the value of the policy.

Mr. *Dorning* filed three affidavits in support of his Case. The first was his own, in which, after stating the payments to the agents down to 27 July, 1860, inclusive, as in the Case, he proceeded as follows:

3. Between such last-mentioned date and the month of December, 1860, when the next half-yearly premium became due, the said *George Jepson Knight* called upon me and told me that the *Medical* had transferred their business to the *Albert*, and that he was their continuing agent; and at the same time he asked me to let him have the policy I have above mentioned, that he might forward the same to *London*, either to be exchanged for a new policy, or indorsed by the

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*Albert*. This I positively refused to give him for any such purpose; at the same time most emphatically stating that I would hold to the *Medical* and their proprietary to the end, as security for my insurance, and that as he was to be the continuing agent he must distinctly understand, and let his principals know, that every future premium I might pay in respect of such policy would be paid for the *Medical* only, and that I would never leave them, nor would I admit that they had any right to transfer their obligations to me in respect of the said policy to any other parties without my consent, and that consent I never would give.

4. When the next premium became due, namely, in January, 1861, the said *G. J. Knight* called upon me for such premium, and again requested me to hand him my policy for exchange or indorsement, I refused again to do so; but in July, 1861, I consented to hand over to him my policy for the purpose of his forwarding the same to his principals' head office for examination; but I stated to him most distinctly that the policy must neither be exchanged or indorsed, and on the 20th July, 1861, I sent the said policy to the said *G. J. Knight*, by my then clerk *John Paterson*, and received back from the said *G. J. Knight* a receipt in the words following, namely:

*Manchester, July 20, 1861.*

Received from *E. Dorning*, Esq., his policy in the *Medical, Invalid, and General Life Assurance Company*, No. 2895, on the life of *M. Whittaker* [to be exchanged] for [one in] indorsement by the *Albert and Medical Society* on same terms and conditions.

GEO. J. KNIGHT,  
Agent.

5. On reading the receipt, I at once sent my clerk back to *G. J. Knight* to say I would not have the policy exchanged, and he then altered the receipt for indorsement as it appears.\* I again sent the receipt back, and said I would not have it indorsed; and his reply was that he would forward my instructions to the office as requested, but that it was no use altering the receipt again; it would do to shew who had got the policy. The receipt is now produced to me marked with the letter B.

6. I afterwards received a document in the words and figures following, namely: 1899.

ALBERT AND MEDICAL LIFE ASSURANCE COMPANY,

23 July, 1861.

I hereby certify that Mr. *Geo. J. Knight* has this day deposited with me policy No. 2895, on the life of *M. Whittaker* for £800, issued by the *Medical, Invalid, and General Life Assurance Society* for indorsement by the *Albert and Medical Life Assurance Company*.

C. DOUGLAS SINGER,  
Sec.

The said document is now produced, and shewn to me marked C.

7. The said *C. Douglas Singer* had been the secretary of the *Medical*, and was then the secretary of the *Albert*.

8. I did not trouble myself about the policy until the next following premiums became due respectively between that time and the 8th June, 1863, beyond

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\* The meaning is, that the words in brackets [ ] were struck out, and the words indorsement by inserted.

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stating last time I paid such respective premiums that I paid to the original proprietary and not to the *Albert*, and objecting to the form of receipt, and inquiring why my policy had not been returned.

9. On the 8th June, 1863, I wrote to Mr. *Singer* in the words and figures following, omitting formal parts :

Mr. *Douglas Singer*,

*Albert and Medical Life Insurance Co., London.*

SIR,

Policy No. 2895, issued by the *Medical, Invalid, and General Assurance Society*.

Can you explain to me the reason why you do not return this policy, which you have had for examination since July, 1861 ?

And I received from him the following reply, omitting formal parts :

*Elias Dorning, Esq.,*

DEAR SIR,

2895 Med. Ipv.

With reference to your letter of yesterday, I herewith return the above policy, the receipt of which you will please acknowledge.

Yours faithfully,

FRANK EASUM,

*Secretary.*

10. The policy was inclosed in the letter, and is now produced to me, marked A. There is no indorsement upon it.

11. In the month of May, 1865, I received a letter, of which the following is a copy :

ALBERT LIFE ASSURANCE COMPANY,

7, Waterloo Place, Pall Mall, London, S.W.

25 May, 1865.

SIR,

Medical Policy, 2895. *E. Dorning.*

As the above policy issued by the *Medical Invalid Society*, which transferred its business to this office in 1860, has not yet been sent in either for exchange, or for the purpose of being indorsed with an admission of this company's liability, I shall be much obliged if you will kindly forward it to me at your early convenience, to assist us in getting the outstanding policies properly indorsed or exchanged, as may be preferred, by the holders.

I am, Sir,

Your obedient servant,

FRANK EASUM,

*Secretary.*

*E. Dorning, Esq.*

12. On receipt of the said letter, I at once took the same to *G. J. Knight*, and shewed it to him : and stated again that I would neither have the policy indorsed or exchanged. The letter is now produced, and shewn to me, marked E.

13. From the 8th day of June, 1863, up to and including the 27th day of July 1869, I continued to pay the half-yearly premiums in respect of the policy, to *G. J. Knight*, and, at the time of each payment I stated in reference to the form of receipt being on the receipt forms of the *Albert*, that it must be clearly understood it was not to bind me to the *Albert*, nor to be considered as a waiver of my claim

against the proprietary of the *Medical*, and that I should alone hold them responsible. The before-mentioned receipts for my several half-yearly premiums are now produced to me, and are numbered consecutively 1 to 36, both inclusive.

14. When the half-yearly premium for December, 1869, became due, I handed my cheque for the amount to my solicitors, Messieurs *Salé & Company* of *Manchester*, with instructions for the same to be tendered in payment of such half-yearly premium in respect of the policy to the original proprietary of the *Medical*. I have not received the cheque back. From that time to the present the matter has been in dispute.

The next affidavit was that of *Mr. G. J. Knight*, which contained the following passages :

3. I collected the half-yearly premiums in respect of the said policy from *Elias Dorning* from the time of my appointment to the 27th July, 1860, inclusive. ;

4. Shortly after such last-mentioned date I received information from the head office of the society in *London* that the directors of the *Medical* had transferred the whole of their business and liabilities to the *Albert*, together with instructions to obtain the various policies of the respective insurers in the *Medical*, that such policies might be exchanged for new policies in the said *Albert*, or be indorsed by the last-mentioned company, admitting their liability; and I was at the same time appointed the continuing agent of the *Albert*.

5. I accordingly called upon *Elias Dorning* and informed him of such change. I requested him to hand me the policy he held for such exchange or indorsement, but he at once declined to do so.

6. I afterwards repeatedly applied to *Elias Dorning* to hand me the policy for exchange or indorsement, but he declined to do so, and said his policy should stop as it was. I have, however, some recollection that he did at one time subsequently hand me his policy, but still refused to have it exchanged. I have seen a receipt in my handwriting marked B, referred to in his affidavit, and my recollection of it is that he still refused to have his policy exchanged; but I pressed him to have it indorsed, so that he might have the security of the two offices instead of the one.

7. *Elias Dorning*, however, never exchanged the policy to my knowledge, but always objected to do so.

The third affidavit was that of *Mr. Paterson*, which was as follows :

1. I was in the employ of *Mr. Elias Dorning* for upwards of twenty years, ending about in June, 1869.

2. I remember *Elias Dorning* having a policy of insurance for £800 on the life of *M. Whittaker* on a half-yearly premium of £27 12s. 8d., which I was frequently in the habit of paying for him both to the late *Mr. Charles Pennington* and to *Mr. G. J. Knight*.

3. I remember *Mr. Knight* coming to see *Mr. Dorning* several times respecting the transfer of the business of the *Medical* to the *Albert*, and *Mr. Knight* frequently asked *Mr. Dorning* to let him get his policy exchanged for a new policy in the *Albert*, which the latter always refused to do.

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CASE.**

4. I at one time took the policy to Mr. *Knight*. I received his receipt for it, and I know that Mr. *Dorning* objected to the terms of the receipt, and said he would not have the policy exchanged, and that so long as I was in his employ I continued to attend to the payment of the half-yearly premiums, and Mr. *Dorning* continued to object to such exchange, and he frequently, during that time, told Mr. *Knight* that he should always consider the *Medical* responsible.

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Mr. *H. A. Giffard* was for Mr. *Dorning*.

Mr. *Lemon* was for the *Medical*.

LORD CAIRNS called on Mr. *Lemon* to state whether he had any evidence to meet the affidavits filed by Mr. *Dorning*.

Mr. *Lemon* admitted that he had not. The books had been searched, but the correspondence could not be found. There were, however, he submitted, discrepancies in the evidence. If the result of the evidence was that the policy was sent to *London* for indorsement in 1861, and was retained there till 1863, the *Medical* were during that time relieved of liability, the policy-holder having consented, during that time, to accept the indorsement, and that liability could not be put on again without the consent of the *Medical*. Otherwise, he admitted the case was governed by

*Griffith's Case*, L. R. 6 Ch. 374;

from which case, however, it differed in the particular point, that here there had been no withdrawal of the consent. The policy was sent in and allowed to remain for indorsement, and it was simply returned without indorsement.

Mr. *Giffard* was not called on.

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LORD CAIRNS:—I have no doubt that this policy-holder has not lost his right of proving against the *Medical*. I have, in cases that are now very numerous, held that, where persons have allowed themselves to drift into dealing with the amalgamated company, to enter into relations with that new company, and to pay premiums, and to make no protest with regard to the footing upon which they are paying those premiums, they lose the security of the old company and become creditors of the new. But I must say that this



gentleman seems to have had his eyes quite open to the consequences of what he was asked to do, and to have taken every care that a reasonable man could take not to let himself do it. He does not seem to have had any legal adviser; but, from his own good sense, he resisted every approach that was made to him for the purpose of having his policy indorsed or exchanged. There being no contradiction to his evidence, and his evidence being distinct and clear, and I must say credible, as it seems to me, and supported by the written documents, namely, receipts altered from time to time, and supported also to a great extent by the evidence of Mr. *Knight* and his own clerk, I must take it that his claim is substantially proved. He paid his premiums to the *Albert* under a distinct protest that he was so paying in order to keep alive his claim in the *Medical*. His case is the stronger because, in the deed between the *Albert* and the *Medical*, the *Albert* were to receive premiums as agents for the *Medical* in respect of those policies where the holders did not consent to change them for *Albert* policies.

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Solicitors for Mr. *Dorning*: Messrs. *Phelps & Sidgwick*.

Solicitors for *Medical*: Messrs. *Walker, Kendall, & Walker*.

1871

May 26;  
June 19, 23;  
July 21.

## RECONSTRUCTION CASE.

*Continuance of Business—Mutual Insurance Fund.*

Consideration of suggested modes of continuance of existing business of *Albert*, instead of liquidation.

**T**HIS was an application to the Arbitrator for his approval of some scheme of reconstruction of the *Albert*.

Two schemes were presented; one by the Reconstruction Committee, mentioned in section 26 of the *Arbitration Act*, the other by Mr. C. E. Lewis, as a policy-holder in the *Saint George Assurance Company*, one of the companies scheduled to the Act.

The scheme of the Reconstruction Committee began with the following statements :

On the stoppage of the company on 14th August, 1869, a plan of reconstruction was proposed by the provisional liquidators with the sanction of the Court, but it was rejected by the policy-holders, at a meeting held in London, on 9th September, 1869, as being too favourable to the shareholders of the company.

The Reconstruction Committee was formed in December, 1869, to promote a scheme of reconstruction, in order to avoid the ruinous consequences of liquidation.

By the plan of reconstruction first proposed by the committee, it was provided that the *Albert Company* and the associated Companies should together contribute the amount requisite to enable the former company to provide for all its contract liabilities in full.

Before, however, this plan could be carried out, the result of the decisions of the Court of Chancery, as to novation, had very much reduced the amount of the liabilities entitled to rank against the associated Companies, and, in a corresponding degree, had lessened the inducement to the shareholders in those companies to provide their proportion of the required contributions. The plan of the committee was accordingly modified, by providing that the associated Companies should contribute a less amount than was originally intended, and that the policyholders should surrender a portion of their full claims.

This was the plan ultimately submitted to the Court of Chancery.

(The petition for the sanction of the Court was heard before the Lord Justice *James* in the first instance, by permission, and it was held that the Court had no jurisdiction to sanction the scheme: L. R. 6 Ch. 381).

The scheme proceeded thus :

RECONSTRUCTION CASE.

The lapse of time since the stoppage of the company, and the accumulation of death claims, now necessitate important modifications in the plan originally proposed by the committee.

The same causes have, doubtless, diminished the value of the goodwill of the business to a considerable extent ; but from what passed at the several meetings of policy-holders, and the large payments on account of premiums voluntarily made to the committee, both in this country and in *India*, in anticipation of reconstruction, it is believed that a large proportion of the policy-holders are still willing to continue their policies if a sound plan of reconstruction can be devised ; and many of the policy-holders, who, by reason of the lapse of time, have re-insured in other offices, have intimated their readiness, and even desire, to continue their old policies in the *Albert Company* if it should be reconstructed.

The only way of preserving the goodwill for the benefit of the parties interested appears to be a reconstruction, and by no other mode can the Arbitrator deal so effectually with the claims in classes, and so avoid the necessity for dealing with individual cases.

\* \* \* \* \*

In drawing up this proposal, the leading principles of the former plan of the committee have been kept in view, as far as possible, that having been very generally adopted by the shareholders and creditors.

Also the principle sanctioned by the Legislature in the last session (*The Life Assurance Companies Act*, 1870, 33 & 34 Vict. c. 61), that where an insurance company is unable to meet its engagements, the best mode of dealing with its business is to provide for a rateable reduction of its liabilities.

It seems that the basis of any arrangement of the affairs of the *Albert Company* and the associated Companies should be—

1. That the *Albert* assets of all kinds should be apportioned, *pro ratâ*, over all engagements on the books at the date of the stoppage on the 14th August, 1869.
2. That those creditors who have a better debtor in any of the associated Companies should look to such company for a supplemental dividend.

\* \* \* \* \*

It will first be necessary to construct such a table of premiums as the *Albert Company*, having regard to the fact that there will be no commission, dividends, stamps, or other expenses, save those of collection and investment, could now afford to accept.

The policy of each assured, continuing payment of premiums, to be reduced to such a sum as the payments hitherto made would, at the present age, according to the new table, assure. The dividends from time to time payable from the estate being converted into equivalent reversions added to the sum assured.

\* \* \* \* \*

The extent of the liability of the respective associated companies must depend mainly upon the application of the doctrine of novation to each case, and although that question has been the subject of decision in some of the companies as to certain classes of claims, the application of those decisions to each individual case would be extremely difficult ; but it is believed that generally the shareholders in

## RECONSTRUCTION CASE.

those companies would still be willing to adhere to what they were formerly prepared to do, especially if they can be secured individually an immediate release as proposed in the original plan of the committee, on the basis of which many shareholders were willing to contribute in excess of their strict legal liability.

Having regard to all the circumstances affecting the respective companies, it is therefore suggested whether the contributions which by the committee's former scheme the several companies were to make may not still form a fair basis of compromise.

\* \* \* \* \*

The right of the annuitant and endowment creditors to rank against the associated Companies appears to have been well established, and it would be necessary, therefore, in any event, to provide for payment of those claims.

The balance, if any, of the contributions of any company would be applicable to augmenting the sums assured on policies originally granted by that company; and the question would then be whether it should be apportioned amongst all the policies in the particular company, or be limited to those cases where there has not been novation.

There are as yet very few cases in which the question of novation has been decided in favour of the claimants as to policy claims, and having regard to all the difficulties of that question, it is submitted that any contributions from the associated Companies applicable to policy claims (other than those, if any, in which there has been beyond question *no* novation) should be divided *pro rata* amongst the policyholders in the respective companies.

\* \* \* \* \*

It is proposed that a new company should be established (and one with that object has already been registered) for the purpose of carrying out the proposed reconstruction in all its details.

This company will be based upon a subscription of new capital, and will provide certain contingent advantages to the shareholders of the *Albert* and its associated Companies.

It is not intended, however, that the new company should guarantee the calculations, but that it should provide the requisite machinery for working out the reconstruction arrangements.

The capital and funds of the new company will be entirely distinct from the assets of the old companies. So much of the latter as are applicable to provide for the assurance risks on the existing policies, will constitute an assurance fund, to be invested in the names of trustees to be appointed by the policy-holders.

This assurance fund will consist of the following:—

- 1st. The dividends on the claims A [current policies] and B [policies in respect of which no premiums are now payable] above mentioned.
- 2nd. The contributions of the associated companies, or so much thereof as may not be required to provide for the preference claims of annuity and endowment creditors.
- 3rd. The premiums on existing policies.

Periodical valuations would have to be made, and the policies increased or reduced accordingly.

This would, in effect, constitute this fund a mutual assurance fund for the existing policies.

The management of the company, if reconstructed, is proposed to be entrusted to a board of directors formed from amongst the shareholders and policy-holders of the various companies. RECONSTRUCTION CASE.

In submitting the foregoing proposal as the basis of a plan of reconstruction, it is hardly necessary to point out, in conclusion, the difficulties of framing any complete plan until some of the leading principles which lie at the root of the whole matter have been dealt with by the arbitrator. A more complete plan could only proceed on the footing of anticipating those decisions.

\* \* \* \* \*

In pursuance of leave given by the Arbitrator, objections to the schemes were filed.

Mr. *Fry*, Q.C. (Mr. *Webster*, Q.C., with him), appeared for the Reconstruction Committee in support of their scheme. May 26;  
June 19, 23.

Mr. *C. E. Lewis* (solicitor) appeared in support of the scheme filed by him and in opposition to that of the Reconstruction Committee.

Other solicitors appeared in support of objections filed.

*Judgment reserved.*

LORD CAIRNS:—Having regard to section 5 of the *Arbitration Act*, I was of opinion at the commencement of this Arbitration that the duty imposed on me by the Act was, in the first instance, to ascertain, if possible, how far any scheme for reconstruction or reconstitution of the *Albert*, or for the continuance or conduct of its business, could properly be adopted by me. I found, also, in section 26 of the Act, a reference to the body called the Reconstruction Committee. Therefore, finding the duty I have described imposed on me by the Act, and finding this reference to the Reconstruction Committee, I invited, in the first instance, from that committee any scheme for the reconstruction or reorganization of the company which they might desire to propose; and at the same time I gave opportunities for any objections being lodged to that scheme or to any other scheme that might be proposed. July 21.

The consideration of the schemes and objections came before me on 26 May, the day after the Act received the Royal assent.

**RECONSTRUCTION CASE.**

I found, when the argument had proceeded some way on the scheme of the Reconstruction Committee that it involved or assumed certain payments and contributions by the companies, which I may term the absorbed companies; and that it would, in my opinion, be impossible for me either to ask for, or to recommend, or to sanction, payments of that kind, until some data were laid down as to the liabilities of the various bodies,—the various absorbed companies, and the *Albert*, the absorbing company,—which would properly mark out the character and the extent of those contributions. I therefore determined to suspend further proceedings, and to abstain from forming any opinion on the subject of this scheme, until, in the first place, the body of the questions which had been raised, or which might be raised, with regard to the various liabilities connected with the different companies should have come before me and have been disposed of. I proceeded accordingly to hear the various cases which had been begun in the Court of Chancery, or which it was desired to raise before me. On 19 and 23 June, the argument on the question of reconstruction was resumed, and was ended.

In the course of the time that has elapsed, and in the course of this argument, many points which presented some difficulty in the first instance have been cleared away, and may now be put out of the question.

In the first place I have to observe, that it has not been proposed to me, and I certainly never entertained the idea, that there could be any reconstruction of the *Albert* in the form of a company to engage in and carry on new business. That would have been a matter purely of speculation; and it would have been quite out of my province to encourage or recommend reconstruction involving difficulties and responsibilities of the kind which a proceeding of that sort would involve. In the next place it was clearly admitted, and could not be disputed, that in every view of the case, whether there was to be reconstruction in any form, or whether there was not, the whole of the *Albert* capital would have to be got in, and the assets of the *Albert* would have to be realized with greater or less promptitude.

The proposal of the Reconstruction Committee, as it ultimately came to be insisted on before me, amounted to this: the debts of

and claims against the *Albert* were to be proved and valued; the dividend which the assets of the *Albert* would pay was to be ascertained; all creditors, except policy-holders, were to be paid their dividends at once; a mutual insurance fund was to be formed for as many policy-holders as would come in, insuring each, without any fresh examination, for such a sum as his old premium at his present age would cover, according to proper tables moderately loaded; the business of this mutual insurance was to be managed either by a new executive chosen for the purpose, or through some existing insurance company as agents; there was to be handed over to the managers of this mutual insurance that portion of the assets of the *Albert* which represented the dividend due to the policy-holders; and every existing policy-holder was to receive as it were a free policy for a reversionary sum payable at death equal in value to his present dividend.

Now, on this scheme some observations obviously occurred at the outset, and I came to the conclusion very early in the argument, that the mode proposed of dealing with the *Albert* assets was clearly open to objection.

In the first place, it was proposed that the creditors, as I have said, other than policy-holders,—that is to say, the annuitants and general creditors,—were to be paid immediately; but in order to make this payment, a very considerable amount of money would be required, and, therefore, for the purpose of making the payment, the best and most convertible assets of the company would require to have been taken; whereas for the deferred dividends the less convertible and more speculative assets would be set apart, and the result might possibly be that one class of creditors would be paid in good money, and the other class of creditors might find, when the time of payment for them came, that the calculation of the value of the speculative assets was erroneous.

The next objection was this: the proposal was to impound, as it were, the dividend of a policy-holder who did not come in to the scheme of mutual insurance, and pay that dividend, or rather a reversionary sum founded upon that dividend, at death. It was said this, after all, was his contract of insurance, which provided for a sum payable at death only. The answer to that appeared to me to be conclusive: no doubt the contract

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of insurance was for a sum payable at death, and if the policy of insurance had continued, and the company had continued, and there were a capital and a guarantee fund continuing behind, that contract might well have been maintained, and the right of the policy-holder to any immediate payment might have been disputed; but, when everything vanished, except dividend, when there was no longer any capital behind, or any continued insurance fund, it seemed to me to be impossible to insist on that part of the contract that would defer payment till death, when the only payment to be made was a dividend on the value of the claim.

A further objection was this: the assets representing the dividend, when handed over, must either be kept separate by the mutual insurance executive, or else be mixed with their general funds. If they were to be kept separate the transaction would have been quite useless; it would have been of no assistance to the project of mutual insurance. If, on the other hand, the assets were to be mixed, it might lead to very unfair results, because if the mutual insurance scheme did not succeed, the assets representing the dividend of those persons who had not come in might be imperiled and lost, for the benefit of those who had come in.

Then another objection was insisted on, a very obvious one, to the whole scheme, namely, that a mutual insurance scheme of this kind might have a tendency to attract the tainted lives only. The lives formerly insured in the *Albert* which were strong and healthy lives might have insured themselves, or might be able to insure themselves, on very good terms with other good companies; whereas the tainted lives might be those, in the process of natural selection, which would come in first, or almost exclusively, and join the mutual insurance scheme.

Then, beyond that, the scheme of mutual insurance, if feasible at all, would obviously depend very much on the skill, fidelity, and experience of the executive body appointed to manage the scheme; and if that executive body were to be chosen by the policy-holders who came in and joined, there would be a twofold difficulty: in the first place, you could not get your executive until you knew



what policy-holders would come in and join; and, in the next place, a body of policy-holders scattered all over this country and other countries, without any cohesion, or any common mode of action, would be perhaps the worst possible constituency for choosing a skilful executive.

These considerations, occurring on the proposals made to me, narrowed very much the course I thought I ought to take. It appeared to me the course I was bound to take was, in these circumstances, to endeavour to ascertain whether there was any existing office of good repute and credit, that would undertake to re-insure, without any fresh examination, the lives which were insured in the *Albert*, for such a sum as those lives at their present age might properly be insured for, on the old premiums, or that would undertake as agents to manage a mutual insurance scheme, if a mutual insurance scheme was adopted. There were certain inducements that might lead an existing office to adopt the first of those alternatives,—namely, to re-insure the lives for such a sum as the former premiums might properly cover. There would be no agency expenses involved in the transaction; there would be a considerable amount of business obtained; there would be no advertisements, no commissions; and so far the company adopting the lives would save the money which they would otherwise have to spend in acquiring the same amount of business. Against this would have to be put the circumstance that they would be taking lives without examination, which many companies might object to.

I issued a circular, which I sent to twenty-nine companies; and I will read the proposal which I made, and the list of the companies to which it was sent. The companies are: The *Alliance*, *British and Foreign*, the *Atlas*, the *Commercial Union*, the *Eagle*, the *Economic*, the *English and Scottish Law*, the *Equitable*, the *Equity and Law*, the *Guardian*, the *Imperial*, the *Law*, the *Legal and General*, the *Liverpool and London and Globe*, the *London Assurance Corporation*, the *London and Provincial Law*, the *North British and Mercantile*, the *Northern*, the *Norwich Union*, the *Pelican*, the *Provident*, the *Rock*, the *Royal*, the *Royal Exchange*, the *Scottish Widows' Fund*, the *Standard*, the *Sun*, the *Universal*, the

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*University*, and the *West of England*—twenty-nine in all. The circular (which was signed by the secretary of the Arbitration) ran in this form, after the preliminary part of it :

3.—The arbitrator is given to understand that it is not unlikely that an existing company would be found willing to accept such a transfer as is authorized by that section [that is, section 5 of the *Arbitration Act*] of part of the business late of the *Albert Company* not otherwise provided for, namely, that relating to life assurance proper. 4.—He is desirous of being informed whether your company would be disposed to accept such a transfer, and if so, on what terms. Two modes have been suggested in which such a transfer might be effected, and with respect to each of them (in case your company would be disposed to enter into any negotiation on the subject), I am to invite a statement of the views of your company. 5.—One mode suggested is that the company accepting the transfer should keep the business relating to the transferred policies and the funds arising from the premiums on those policies separate and distinct from the ordinary business and funds of their own office, and should manage the transferred business as agents of or trustees for the holders of the transferred policies in consideration of a stipulated remuneration in the form of a commission or in the form of a fixed annual payment. In this mode of arrangement the arbitrator would settle the amounts of policies and premiums; the policy-holders would in effect constitute the members of a mutual insurance company, the government of which would rest with the office accepting the transfer, and to that office no responsibility except for good management would attach. 6.—The other mode suggested is that the company accepting the transfer should assume the responsibility of meeting claims on the transferred policies as they arise in like manner in all respects as if the policies had been originally issued by themselves (the accepting company). In this mode of arrangement it would be necessary for the arbitrator to settle with the accepting company the terms on which the transferred policies should be taken over. The arbitrator would make it part of this arrangement; (first), on the one hand, that there should be no further medical examination of the insured; (secondly), on the other hand, that there should be a considerable number of policies (as, for example, not fewer than one thousand) brought in to the accepting company within a short time, to be limited, and that, in default of the minimum number fixed being brought in within that time, the arrangement should be at an end; and (thirdly), that the accepting company should bind themselves to take over on the same terms all such other policies of the *Albert Company* or of the other companies scheduled to the Act as should be brought in, either within a limited time, or at any time without limit, as should be arranged between the arbitrator and the company. It will rest with any company disposed to treat for such a transfer on the general conditions indicated to state in the first instance to the arbitrator in answer to this invitation what amount they would insure at the present age of an insured, in consideration of a continued payment of the premium formerly payable to the *Albert* or other insuring company, or on the other hand what premium they would require in order to continue the insurance of the amount formerly insured. It will depend on the answer given by your company on this point, whether the arbitrator would seek to continue negotiations with them.

Paragraph 7 inquired whether the company would accept such of the assets of the *Albert* as could be better realized by a slow process of realization, as purchasers, and pay a sum that might be properly equivalent for them, or undertake the collection and realization of them, as agents: and then in paragraph 8 there was a stipulation that if any company were disposed to enter into any part of the arrangement described, it would be necessary for them to satisfy me that they had legal power to enter into the arrangement.

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CASE.

I requested an answer from the companies to which that circular was addressed by the 15th of this month; that is to say, last Saturday. The circular was, as I have said, sent to 29 companies. I have received answers from 21. I assume, the time having past, the other companies do not desire to answer the circular. Of the 21 answers I have received, 17 refuse or decline to enter into negotiations on any of the bases proposed. All of the companies that have answered decline to negotiate on the footing of taking over and making themselves responsible for the policies, even by way of reduction of the amount insured. They decline to negotiate on that footing at all; to take over the policies without a fresh examination of the lives. I ought to qualify that, however, in this way; one company say that if the proposal is restricted to English policies, and cuts off Indian policies and Continental policies, they would be willing to enter into negotiations. Four of the companies express a willingness to negotiate for the agency, if I may so term it, of a mutual insurance scheme, if one should be formed,—that is to say, they profess a willingness to manage a scheme of that kind for a remuneration, either by commission or for a fixed sum, without any responsibility whatever on their part for the insurances. That is the result of the communications with the 29 companies.

I look upon these answers as putting out of the question the possibility of inducing any existing company to take a transfer of the policies for any amount, without examination of the lives.

I have then to satisfy myself that a mutual insurance scheme would be a scheme safe as a commercial speculation, and one which I could properly and conscientiously hold out to the policyholders as a scheme which I could recommend them to adopt,

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and to which I could endeavour to induce them to accede. If the scheme is not one of this kind I should be doing very considerable injustice. If, through any recommendation of mine, a scheme of that kind was set on foot, and was not ultimately a safe commercial scheme, the consequence might be this: premiums would be paid by those who came into it, the insurances on the lives which dropped first might be paid, the funds might be sufficient to pay them; but if the scheme at bottom was not a sound scheme, the lives which subsequently dropped might drop when the assets had diminished, and there might be no assets to satisfy the claims arising at a more remote time. I was anxious to test such a scheme in the best possible way, and to obtain the opinion of insurance offices on the subject. It appeared to me that there could be no better or more practical way of ascertaining their opinion, than to propose to a considerable number of offices, as I did to these 29, that they themselves should undertake as a commercial scheme for their own benefit the re-insuring of the lives, without any fresh examination, for such a sum as might be properly covered by the existing premiums. If I had found that these companies, or any considerable number of them, had been willing to undertake a scheme of this kind for their own benefit, I should have accepted that as a very good practical proof that the scheme was a commercially sound one, and I should then have felt myself at liberty to consider whether it would be better to hand it over to one of these companies for their own benefit to conduct it, or to form a mutual insurance company, the results of which I should in that case have had confidence in, from the fact that these experienced companies were willing to undertake for themselves a business of that kind. I can but look at the refusal of the companies to undertake a re-insurance for their own benefit as the strongest practical proof, that the scheme as a commercial undertaking would not be a safe one, and would not be one which I could properly or safely recommend to the policy-holders of this company to adopt. I confess very reluctantly, after the best consideration I can give to the case, I am very clearly of opinion that I cannot undertake the formation of the only scheme which I could have adopted for the re-construction or re-constitution of this business, namely, a mutual insurance scheme for all the lives, or for those

of the lives that might choose to come in, without any fresh examination. RECONSTRUCTION CASE.

The result, therefore, of the whole of this investigation I have made,—which in one point of view I do not regret, because I think it is more satisfactory that the matter should have been fully argued and considered, and tested in the way I have tested it,—is that I must put aside altogether any idea of reconstruction or reconstitution.

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Solicitors for Reconstruction Committee: Messrs. *Ashurst, Morris, & Co.*

Solicitors for Mr. *C. E. Lewis*: Messrs. *Lewis, Munns, Nunn, & Longden.*

1871

June 1, 15.

## TAIT'S CASE.

*Officer—Discontinuance of Services—Agreement*

The order for the winding-up of a company held not to operate as a discontinuance by the company of the employment of an officer, within the terms of the agreement for his services, the winding-up being the act of the Court.

THIS was an application, on a Case stated by agreement, for the decision of the Arbitrator on a claim by Mr. *P. M. Tait* against the *Albert*, for £5000, in respect of his services in the capacity of Indian Manager.

Mr. *Tait* had filed an affidavit detailing his arrangements with the *Albert* and previously with the *Medical*.

June 1.

Mr. *Cracknall* was for Mr. *Tait*.

Mr. *Higgins* was for the *Albert*.

Mr. *Cracknall* referred to

*Yelland's Case*, L. R. 4 Eq. 350;

*Clark's Case*, L. R. 7 Eq. 550;

*Logan's Case*, L. R. 9 Eq. 149;

and clauses 55, 60, 61, 137 of the *Albert* deed, and the supplemental deed. He also mentioned, in reply,

*Ridgway v. Hungerford Market Company*, 3 A. & E. 171.

The case was adjourned on a question of fact.

June 15.

LORD CAIRNS :—This case was fully argued, but at the close of the argument a suggestion was made against Mr. *Tait* that payments had been made to him which might have a bearing on his claim. I stated that if it was suggested to be material, there must be evidence on the point. Mr. *Tait* then elected to be examined

at a future day. On reflection, I have arrived at the conclusion that nothing coming from that examination could bear on the point I have to decide. Therefore, it is not necessary to have the examination, and I will now dispose of the case. Tait's Case.

The claim is made by Mr. *Tait* against the *Albert* for the sum of £5000. Mr. *Tait* was the manager in *Calcutta* of the *Medical*. The *Medical* joined the *Albert* in 1860. Mr. *Tait* was then in *England*.

The *Albert* directors wished to retain him as their agent, and therefore a contract was made, the terms of which are evidenced by a letter of 27 June, 1860, by a board resolution of the same date, and by two board resolutions of 8 and 22 August, 1860.

The letter of 27 June, 1860, signed by three directors, and addressed to Mr. *Tait*, is as follows:

On the amalgamation of the *Albert* and *Medical* . . . businesses, we, the undersigned, Lord *George Paulet*, *George Raymond*, and *George Goldsmith Kirby*, being three of the directors of the *Albert* . . . for and on behalf of the *Albert* . . . undertake to maintain all existing agreements touching remuneration between the said *Medical* . . . and yourself, and your colleague *W. F. F.*, and that you shall be under no obligation to reside in *India* after such amalgamation; it being understood that in lieu thereof you are to give your time and attention to the chief office of the *Albert* . . . to the conduct of the Indian business of the *Albert* . . . under the name or style of a director of the India Board or business; your remuneration hereby secured to you never to fall below the annual allowance drawn by you under your agreements with the *Medical* . . . on the average of the five years ending 30th June, 1859, that is to say, £1000 sterling per annum, provided the annual premiums in respect of the Indian business amount to the sum of £30,000. . . .

There is nothing in that as to the £5000. The resolution of 27 June, 1860, the same date, states that this letter had been read and approved by the board.

That letter was not altogether satisfactory to Mr. *Tait*. He states in his affidavit that he had some communications with Mr. *Kirby*, the manager of the *Albert*; and ultimately Mr. *Kirby* writes to him on 23 August:

I have the pleasure of handing you the subjoined copy resolutions passed at our board meetings on the 8th and 22nd instant respectively.

The resolution of 8 August, 1860, is this:

That £5000 be paid to Mr. *P. M. Tait* if the company discontinue to employ him from any cause other than misconduct.

**TAIT'S CASE.** On 22 August, 1860, a further resolution was come to, namely:

That the words 'from any cause other than misconduct' be and are hereby erased from the resolution passed on the 8th instant in reference to Mr. *Tait*.

The result therefore is that the resolution stands thus: That £5000 be paid to Mr. *Tait* if the company discontinue to employ him. I will assume that this, coming in the circumstances that attended it, formed part of the contract and engagement with Mr. *Tait*. I will assume, although I should not wish to decide it, that it was *intra vires* of the directors to make a contract of this kind. I will assume further that the contract could not be impeached, even although, on the face of it, it might imply that Mr. *Tait* could not be discontinued in his employment, even for misconduct, without the company paying him this £5000. I will assume all that in his favour.

The question, however, arises, and the question which I have to decide is, has the company discontinued to employ Mr. *Tait*? Now what has happened is this: the company has been ordered to be wound up; the Court of Chancery, under the authority of the Legislature, has interposed, and, on the ground of the insolvency of the company, has laid its hands on the company, arrested it in the carrying on of its business, taken possession of its assets with a view to divide them and satisfy the claims that were existing at the time of winding up, and with a view to dissolve and extinguish the company, and in a civil sense to annihilate the corporation: Then does this *vis major*, operating on the company in this way, amount, in the language of the contract, to a discontinuing on the part of the company to employ Mr. *Tait*? In my opinion it does not. In my opinion, in order to bring the assets of the company under a liability on this contract, there must be a voluntary, active, intelligent discontinuance by the company of the employment of Mr. *Tait* as their agent, at a time and in circumstances when it was optional with them either to continue or discontinue it. That, in my opinion, is what is pointed at by the contract entered into, and that, in my opinion, is not what has happened.

I was referred to three authorities; but they do not bear out Mr. *Tait's* proposition. *Yelland's Case* and *Clark's Case* were both cases where the claimant had a contract for five years certain with the



company. Of course he was entitled, at least the Court thought him entitled, to the value of that certain income which was secured to him for five years, and the Court valued his claim on that footing. The case which at first sight appears to have a closer bearing is *Logan's Case*. But when the terms of the contract there are looked at, they seem to me to bring into clear contrast the difference of the two cases. The words there were:

TAIT'S CASE.

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In the event of the said *W. H. Logan* being at any time deprived of or removed from his office for any other cause than gross misconduct, the directors shall pay him a sum equal to three years' salary. . . . .

All therefore that it was necessary for the officer to predicate of his position was that *de facto* he was deprived of or removed from his office, which he clearly was, by the winding-up, both deprived of and removed from. It would be in the power of Mr. *Tait* to predicate that of his position. But that is not what he has to do; he must predicate of his position that the company have discontinued to employ him, which they have not done. Therefore, his claim must fail.

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Solicitors for Mr. *Tait*: Messrs. *F. Richardson & Sadler*.

Solicitors for *Albert*: Messrs. *Lewis, Munns, & Longden*.

1871

June 17.

## ROBERTS'S CASE.

*Officer—Six Months' Notice—Commission to Agents on Premiums.*

Where an officer of the *Albert* was entitled under his agreement to six months' notice to terminate the engagement, and after the winding-up he was continued by the liquidators in their service, without any new agreement, he was held entitled to six months' salary in lieu of notice, as from the day when the liquidators ceased to employ him.

Observations on the duty of liquidators to have in such cases explicit arrangements in writing of a provident character.

Observations on the allowance to agents of the *Albert*, after the winding-up order, of commission on renewal premiums received by them under the authority of the Court, on the terms of being returnable in full on demand.

**T**HIS was an application, on a Case stated by agreement, for the decision of the Arbitrator on a claim of *Mr. R. P. Roberts* against the *Albert*.

*Mr. Roberts* was acting as district manager of the *Albert* at *Newcastle* at the commencement of the winding-up. One of the terms of his engagement was that six months' notice in writing should be required on either side to terminate the agreement. After the commencement of the winding-up *Mr. Roberts*, among others, was retained in the service of the liquidators until 31 December, 1869, on the same terms (it was admitted) as previously existed, but no written agreement was entered into. *Mr. Roberts* claimed six months' salary from 31 December, 1869.

He also claimed a sum for commission on premiums received by him under the order of the Court of Chancery of 14 August, 1869, authorizing the payment of premiums on the terms of their being returned in full on demand.

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*Mr. A. E. Ryan* (solicitor) was for *Mr. Roberts*.

*Mr. Higgins* was for the *Albert*.

*Mr. Ryan* referred to

*Harding's Case*, L. R. 3 Eq. 341.

Mr. *Higgins* referred to

*Chapman's Case*, L. R. 1 Eq. 346.

ROBERTS'S  
CASE.

A reply was not called for.

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LORD CAIRNS:—I have no doubt that Mr. *Roberts* is entitled to his six months' salary in lieu of notice, as from 31 December, 1869. I look upon his original contract with the company as terminated by the winding-up, and if nothing more had been done he would be entitled to salary for six months from that date; but what was done was, that in the winding-up, and for the purpose of it, he was continued, and continued, as admitted by the liquidators, till 31 December, 1869, on the same terms as previously existed with the company.

I must express, formally, my great disapprobation of the mode in which this arrangement was made. It ought to have been made in writing; the writing ought to have stated explicitly what was the nature of the engagement; it ought not to have been left to an oral arrangement or an understanding; and if it had been reduced to writing, one can only hope that it would have struck the minds of those who were acting for the winding-up, that it was a clearly improvident bargain, that (however desirable it might be to continue this gentleman's services) he should be entitled to six months' notice or six months' salary when his services in the winding-up should come to an end. Obviously that was a matter different from his continuance as a servant of the company as a going concern, and his right to remuneration ought to have been made to cease when the business of the winding-up in which he was engaged should cease.

However, the agreement has been made, it is admitted by the liquidators now, and I cannot break faith with him, however much I may disapprove of the improvidence of the agreement.

With regard to the commission, it is asserted, and the claimant's solicitor is not prepared to dispute it, that the amount claimed has been actually paid or deducted. I must say again it

**ROBERTS'S  
CASE.**  

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is an extraordinary arrangement, one which one regrets, that there should have been any promise held out, regard being had to the nature of the order of 14 August, 1869, that a commission of one per cent. would be allowed for the receipt of the renewal premiums under that order. It was an order not compelling any person to pay premiums; the Court could not have compelled any person to pay premiums. It was not an order assuming that those premiums would be retained and used. It was entirely an option given to the persons insured to continue to pay their premiums in the hope of, or with a view to, the possible reconstruction of the company. That being for the benefit of the persons insured, their option should have been exercised by paying in their premiums free of all expense to the liquidator, taking any expense that might be created upon themselves. The consequence of what has been done is, that here are premiums to be returned, payable on demand, some of which have been demanded, and expense has been incurred, and yet commission is to be deducted, deducted in respect of money which has to be returned in full; which commission therefore must fall really on the costs of the winding-up. However, if the money has been allowed, it must so remain, I cannot alter the arrangement that has been made.

*Mr. Roberts* must have his costs of establishing his claim.

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*Mr. Higgins*:—The liquidators wish that your Lordship should be informed as to the deduction of the commission, that it was done under the direction of the Vice-Chancellor, with this view and this view solely: at the time the order was made which enabled the premiums to be received on that footing, the Court was desirous to keep the concern as a going concern, and to retain all the agents, and there appeared to be no other way of doing it but by the means which have turned out unfortunate, adopting the allowance of commission to the agents, in the hope that the business and the goodwill might be preserved.

**LORD CAIRNS**:—If the liquidators had the sanction of the Court, that removes any observation I have made upon it.

Mr. *C. E. Lewis* (Solicitor):—And the amount of the commission was transferred from time to time from the general account to the renewal premium account, so that the policy-holders might have their deposit for premium returned in full.

ROBERTS'S  
CASE.  
      

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Solicitor for Mr. *Roberts* : Mr. *A. E. Ryan*.

Solicitors for *Albert* : Messrs. *Lewis, Munns, & Longden*.

1871

June 17.

## EASUM'S CASE.

*Trustee of Shares for Company—Contributory—Indemnity.*

Shares having been transferred to the secretary of the *Albert* as trustee for the company, he was held liable to be put on the list of contributories, but entitled to prove for indemnity out of the assets.

THIS was an application to the Arbitrator, on a Case stated by agreement, to determine whether Mr. *Easum*, the late secretary of the *Albert*, was liable to be settled on the list of contributories in respect of forty-one shares standing in his name, and, if so, whether he was entitled to indemnity out of the assets.

Mr. *Easum* and the liquidators had filed affidavits in the Court of Chancery. Mr. *Easum's* affidavit stated that, while he was secretary, he was induced to allow the directors to place shares in his name in the books, until they could be transferred into the names of other persons; that the forty-one shares in question formed a residue of such shares; that he was informed by the directors that there was a clause in the deed of settlement empowering them to appoint a trustee to hold shares for them, and that the matter was a mere form, and no responsibility would attach to him; that no pecuniary consideration was paid to or received by him; and that he never received any dividend or derived any benefit from the shares. The liquidators' affidavit confirmed this statement, and said that the dividend account had never been charged with dividend on the shares; that no warrants had been prepared for the dividend thereon; and that in one of the pages of the share ledger the account of Mr. *Easum* was stated to be his account as trustee for the company. Mr. *Easum* also filed an affidavit in the Arbitration, stating that on amalgamations the directors of the *Albert*, in order to have a larger number of *Albert* shares to give to new shareholders coming in, arranged with some of the *Albert* shareholders to reduce the number of the shares held by them, treating those retained by them as fully paid up, the

shareholders transferring the residue of the shares to the company, and the directors putting them provisionally into the name of the secretary.

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Mr. *Stock* was for Mr. *Easum*.

Mr. *Higgins* was for the *Albert*.

Mr. *Stock* referred to clauses 101, 102, 103, of the *Albert* deed, and to

*Oriental Commercial Bank Case*, L. R. 3 Ch. 791;

*Saunders's Case*, 2 De G. J. & S. 101;

*Chapman's Case*, L. R. 3 Eq. 361.

Mr. *Higgins* stated Mr. *Easum* had executed transfers to himself, and referred to clause 210 of the deed.

Mr. *Stock* in reply.

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LORD CAIRNS:—I do not think there is any doubt about this case, although it may present some features of hardship with respect to Mr. *Easum*.

Mr. *Easum* has forty-one shares assigned to him in the *Albert*; he executes a deed of transfer to him, and by that deed he covenants under his seal with three trustees on behalf of the company that he shall and will at all times thereafter observe, keep and perform the several covenants, clauses, provisoes, stipulations, and agreements, contained in the deed of settlement of the company or any deed supplemental thereto. He has, therefore, covenanted among other things to pay all the unpaid calls on these shares. The consequence of that is that his name is inserted in the books of the company, sometimes without any qualification, at other times with the qualification of trustee, which, of course, would not diminish his responsibility to creditors. In that state of things the company is being wound up, and the Act of Parliament lays down that in an unregistered company of this kind every person shall be deemed

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to be a contributory who is liable at law or in equity to pay or contribute to the payment of any debt or liability of the company. It appears to me, beyond doubt, that Mr. *Easum*, as regards creditors, is liable to contribute to the payment of the debts of the company, and that he therefore must be on the list of contributories.

The circumstance that he was placed on the books as a trustee for the company will, if all was properly done, give him rights over against the company: but the very clause (103) of the deed which contemplates that he shall have rights against the company contemplates also and implies that the rights over are rights of indemnity against liabilities which he will incur by accepting such a transfer as he has accepted. The deed itself supposes that he will incur the liability of being a contributory.

Now, it is on this point that it might be material to consider whether that which was done with reference to these shares by the directors was *intra vires* or *ultra vires*. In case it was *intra vires* he would be entitled to the indemnity; if it was, to his knowledge, *ultra vires*, a question might arise whether he would be entitled to indemnity. Looking to the position of the secretary, I should not expect him or hold him bound to scan or criticize very narrowly that which was done by the directors, for the purpose of seeing whether it was to the letter warranted by the deed. I should be unwilling to take that course; but even if I were willing, I am not prepared to say that what the directors here did was not in substance warranted by the deed. Because, in substance, what it is suggested they did was this: they had a shareholder, for example, who wanted to have a certain number of his shares treated as paid-up shares, and in place of paying the amount unpaid on them, he gave over to the directors some of his other shares, which the directors then treated as equivalent to so much money, and in place of money passing they wrote up the shares as paid in full. There is very little difference between that and paying money for shares which they buy, and then receiving it back from the vendor to pay up in full his other shares. Therefore, I think, Mr. *Easum* has a right to be indemnified on the ground of this being a transaction that is in substance within



the meaning of clause 103, and he must be put on the list of contributories for the forty-one shares, and will have a right to enter a claim, and prove for indemnity out of the assets of the company.

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Solicitors for Mr. *Easum*: Messrs. *Brady & Ward*.

Solicitors for *Albert*: Messrs. *Lewis, Munns, & Longden*.

1871  
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 June 17
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LEWINE'S CASE.

Agent—Commission on Premiums—Ultra vires.

Agreements by directors with an agent (1) for continuance to him in case of his retirement from the agency of a commission on premiums on policies effected through him and in force at his retirement, there being no stipulation that he should continue in the agency for any definite time, or that the commission should cease if the premiums ceased to be paid; (2) for allowance of commission on premiums to his wife and children after his death in the agency; held unreasonable, and *ultra vires*, and not binding on the company.

THIS was an application, on a Case stated by agreement, for the decision of the Arbitrator on a claim against the *Albert* of Mr. George Lewine, of Berlin, a former agent.

Mr. Lewine was manager of the German branch of the *Albert* from 1857 until the winding-up in 1869. His emoluments had varied; at the winding-up they were a salary of £300 a year (out of which rents and salaries of clerks were paid) and a commission of 10 per cent. on renewal premiums in his branch, with a procuration fee on sums assured by new policies effected through his agency.

It was alleged by him that, in 1857, an unwritten arrangement had been made between him and the manager of the *Albert*, that in case he (Mr. Lewine) should retire from the agency, the *Albert* should continue to pay him a commission of 5 per cent. per annum on renewal premiums on policies effected through his agency and in force at his retirement.

In November, 1861, a further arrangement was made with him, as appeared by the following board minute of that date:

The question of allowing part of G. Lewine's commission to his widow and children after his death was considered; and 2½ per cent. commission on renewal premiums was agreed to be allowed to his widow after his death.

Again, in May, 1862, the following resolution was passed by the directors:

Whereas it was resolved at a board meeting, held on the 13th November, 1861,

that £2 10s. per cent. upon the amount of the renewal premiums of assurance received at or through the *Berlin* agency should be paid to *Jane Lewine*, wife of *Mr. G. Lewine* (agent-general of this company at *Berlin*) after his decease, for the remainder of her life, if the same renewal premiums so long continue receivable :

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Resolved,—That in case of the death of the said *G. Lewine* and *Jane* his wife within the term of 15 years from this day, the said £2 10s. per cent. be paid during the remainder of the said term of fifteen years, unto or in trust for the children of the said *G. Lewine* and *Jane* his wife, living for the time being, for the benefit of such children in equal shares, and that such payment be made to the lawful guardian or guardians of such children for the time being, whose receipt shall be a sufficient discharge : Provided always that the said £2 10s. per cent. is not to be paid or payable to the said *Jane Lewine* or to the children . . . if the said *G. Lewine* shall not be in the company's service at the time of his death, or if he shall not from time to time duly account to the company. . . .

Mr. Lewine owed the company, on the balance of the general account with him as agent, £2768. Against this he claimed £6037 for loss of commission.

The questions for the Arbitrator were : (1) Whether *Mr. Lewine* should not be ordered forthwith to pay to the company the sum of £2768. (2) Whether, in the circumstances, he had any and what claim against the company.

Mr. Holl was for *Mr. Lewine*.

Mr. Higgins was for the *Albert*.

Mr. Holl distinguished

Mackure's Case, L. R. 5 Ch. 737.

Mr. Higgins was not called on.

LORD CAIRNS:—With regard to what are termed the supplementary agreements, as they are alleged, in favour of the wife and children of *Mr. Lewine*, it appears to me they may be at once put out of the question. There was no consideration for those agreements on the face of them. Whatever contract had been made

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between the company and Mr. *Lewine* was completed long before that time. There was no further inducement or benefit offered on the face of those agreements to the company, in return for the benefit that was proposed to the wife and family. It seems to me that in law those agreements could have no validity against the company or the directors.

With respect to the first agreement which is alleged, it is in the first place to be observed that there is no writing or minute supporting it; nor do the subsequent minutes with regard to the wife and the family or Mr. *Lewine* refer to this prior one, although there may be some surmise from the character of the later minutes that there had been something of this kind stipulated for on a former occasion. But there is, in point of fact, no writing or minute to support it.

A more serious objection, however, is this: If an agreement was made by the directors of the company in the terms alleged by Mr. *Lewine*, in my opinion it was entirely *ultra vires*; the directors, as regards the terms of it, providing for the payment of commission on renewal premiums in case of the retirement of Mr. *Lewine* from the agency. In the first place, there is no stipulation on the part of Mr. *Lewine* to continue the agent of the company for any definite length of time. He is left entirely the master of the position, to retire when he pleases and as he pleases. It is not therefore an agreement binding or professing to bind the company to pay Mr. *Lewine* something in case they desire to get rid of him, to turn him off from caprice or without sufficient cause. It is exactly the opposite. It is an agreement professing to bind the company to pay Mr. *Lewine* a future payment during the rest of his life, in case he chooses to retire from the business of the company; an agreement, therefore,—as to which, perhaps, you may not be able to say technically there is not consideration for it, as part of the whole contract of agency,—but so unreasonable and so contrary to what obviously is the duty of directors in a case of this kind, that it appears to me it could not possibly bind the company. But, still further, when we come to look at the nature of the agreement, and the specific powers that are given to the directors, it seems to me that this

was not an agreement within the powers of the directors, or within clauses 61 and 62 of the deed of settlement.

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Those clauses give a very considerable latitude to the directors to bind the company by the salaries which they may allot to the agents and managers of the company in different places, or by any allowances which they may make to those persons by way of commission. But both the salary and the commission must be for services rendered, and not for services not rendered. It seems to me that it would not be *intra vires* of the directors to stipulate that if any agent of theirs chose to retire from their service they would allot him a salary for the remainder of his life. It seems to me that that would be an improper agreement; and just in the same way it is an improper and unwarrantable agreement to say, that if an agent chooses to retire they will allot a commission to him for the remainder of his life, in respect of the premiums payable on the policies subsisting at the time of his retirement.

Then, further than this, it is to be observed, that the commission is on premiums; and commission drawn from that source is, and must be from the nature of it, dependent on the existence of premiums. Now it is impossible for an agent to make a claim on the footing of there being an established certainty that premiums will be payable for the future, in respect of which he ought now to be allowed damages or compensation because he will not receive his commission on them. *Non constat* that the business, if there had been no winding-up, would have been carried on; *non constat* that the persons insured might not have done, as has often been done, take the security of another office, transfer their insurances to another office, and cease to pay any premiums to the *Albert*; *non constat* that the policies might not have been dropped, as appears to be admitted by Mr. *Lewine*; who, feeling the force of that view of the case, although he says he would be entitled to claim some £12,000, is willing, as he says, to meet the chance of policies dropping, to take some £6000 in satisfaction of his claim. In point of fact, as things have turned out, looking on the winding-up as it has occurred, and treating it as a *vis major*, as regards the whole proceedings of the company, I consider there is at this moment every probability that no premiums will be received; any

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temporary receipt is on the footing of an order of the Court of Chancery merely provisional.

For all these reasons I am of opinion that Mr. *Lewine's* claim is one which cannot be supported. All I can do is to make an order for the payment by him of the £2768 admitted in the Case to be due from him.

Solicitors for Mr. *Lewine*: Messrs. *Kimber & Ellis*.

Solicitors for *Albert*: Messrs. *Lewis, Munns, & Longden*.

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*Policy—Novation.*1871
June 24.

Novation consequent on amalgamation established against the holder of a policy issued by a branch of the *Medical* in *India* in the following circumstances: He received on the amalgamation a circular intimating that the income and funds of the two companies were thenceforth combined, and that the funds of the branch would be put in trust as an additional security to policy-holders in *India*, all claims occurring after a day fixed being paid from the funds of the new association; he thenceforth paid his premiums at the office of the transferee company, and took receipts of that company's Indian branch.

THIS was an application, on a Case stated by agreement, for the decision of the Arbitrator on the claim of Mr. G. S. Fagan to prove against the *Medical*, on a policy without profits dated 30 November, 1856, issued to him by the *Medical* in *India*, for Rs.20,000, on his own life.

In 1851 a branch office of the *Medical* was established in *Calcutta*. Directors were appointed, who there issued policies on behalf of the *Medical*, and conducted the general business of the *Medical* under instructions from the directors in *London*.

In November, 1860, the following circular was addressed to the policy-holders of the *Medical* in *India*. It was admitted in the Case that Mr. Fagan either received a copy of it or had notice of its contents:

MEDICAL INVALID AND GENERAL LIFE ASSURANCE SOCIETY,
Calcutta, 28th November, 1860.

Sir,—I take the liberty of directing your attention to a notice printed on the back hereof which is now appearing in most of the Indian and Ceylon papers.

In the event of your electing to take out a fresh policy in the *Albert and Medical Assurance Company* please fill up and return to me the subjoined form marked A., surrendering your existing *Medical* policy at the same time, when a new policy will be issued immediately thereafter.

The most convenient time for this operation will be when the next premium on your existing policy becomes due.

The subjoined notice gives certain details of the arrangement which has been made in establishing the new office; I beg to add the following particulars.

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The capital of the *Albert and Medical* is £447,180, subscribed by 414 proprietors, £137,792 being paid up; this is exclusive of the *Medical* shareholders, who are about 150 in number, with a subscribed capital £500,000, and £28,000 paid up, and a large proportion of whom join the new concern.

The funds exceed £500,000 sterling, the annual revenue premium £220,000, which is increasing at the rate of £25,000 per annum.

There are several important additional advantages offered by the *Albert and Medical* under their policies. For instance, the profits are equal to five-sixths divisible every three years, instead of two-thirds divisible every five years, as in the *Medical*. Policies lapsing from non-payment of premium may be renewed within six months, instead of three months as before, and in cases of persons assured dying during the currency of the days of grace the policies remain valid and effectual, the premium due being deducted from the sum assured. Persons proceeding to *Europe* or other climate equally healthy, whether for temporary or permanent residence, are placed on English rates from the date of arrival, and not one year after that date as before.

The new prospectuses containing full particulars are in the press.

The rates of premium for *India* remain unaltered.

The directors here and in *England* recommend the acceptance of policies in the *Albert and Medical* in lieu of those in the *Medical* office. The business of the two companies can be conducted in one establishment and by one staff, without any material enlargement of the latter, and thus the expenses of management are materially reduced.

The funds here at the date of amalgamation are put up in trust as an additional security to *Medical* policy-holders in *India*.

I shall be glad to afford you any further information which may be required, and to facilitate your views in any way touching your policies in the *Medical* office,

And remain, Sir,

Your very obedient Servant,

P. M. TAIT,

Secretary.

The notice referred to in the foregoing circular (as printed on the back thereof) was as follows:

ALBERT AND MEDICAL LIFE ASSURANCE COMPANY,

Head Office, *Pall Mall, London*.

Established 1838-41. (Indian Branch.)

Preliminary Notice.

The directors beg to announce that the business of the *Medical Society* has been amalgamated with that of the *Albert Life Assurance*, and that henceforth the operations of both companies will be carried on under the above name or style.

[Then followed the passages stated in the judgment.]

Under the deed of settlement the *Medical* profits are not divisible until 1863, but under that of this company profits are divisible in 1861, and future estimates of profits will be made triennially thereafter, a proportion equal to five-sixths of the

profits being, at the option of the assured, paid in cash, added to the policy, or applied in diminution of future premiums. By the combination of the two companies a very considerable saving to the expenses of management will be secured, which must materially increase the bonus-giving power of the amalgamated company, and thus afford improved prospects to the assured. At two numerous meetings of the proprietors of the *Medical Society* (many of whom are large policy-holders) it was unanimously considered that the arrangements were advantageous to the assured, both as regards security and future expectation of benefit; and the board of directors in London, acting under the advice of Dr. Farr and their consulting actuary, recommend the acceptance of policies in the amalgamated company.

The whole terms and conditions of assurance applicable to *India* have been revised, and several important additional facilities and advantages to assurers offered, whereof particulars will be duly announced. Policy-holders in the *Medical* will be specially addressed by circular on the subject of this amalgamation.

Mr. Walls has been appointed deputy secretary.

By order.

(Signed).

P. M. TAIT, Secretary.

W. B. WALLS, Deputy Secretary.

Calcutta, 26th November, 1860.

Mr. Fagan alleged that he had never applied to the *Albert* to exchange his original policy, and had never had any indorsement made thereon, admitting the liability of the *Albert*.

The following were admitted to be forms of receipts for premiums taken by Mr. Fagan :

MEDICAL INVALID AND GENERAL LIFE ASSURANCE SOCIETY'S OFFICE.

No. 624.

Calcutta,

Jan., 1861.

Policy No.

Received from the sum of company's rupees for the assurance of company's rupees on the life of for the six months ending the nineteenth day of July, 1861, subject to the terms and conditions of the said Policy No.

(Signed by two Directors and Secretary.)

ALBERT MEDICAL AND FAMILY ENDOWMENT LIFE ASSURANCE COMPANY'S OFFICE.

No. 3337.

Calcutta, 20th July, 1861.

Policy No.

Received from the sum of company's rupees for the assistance of company's rupees on the life of for the six months ending the nineteenth day of January, 1862, subject to the terms and conditions of the said policy No.

(Signed by two Directors and Secretary.)

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Albert Life Assurance Company.	Life Receipt, No.	Albert Life Assurance Company.	ALBERT LIFE ASSURANCE COMPANY, INDIAN BRANCH. Received this 19th day of July, 1864, for the renewal of policy mentioned in the margin hereof, the amount of which premium and the period for which it is received being also mentioned in the margin. (Signed by two Directors and Manager.)
	Policy No.		
	Sum Assured Rs.		
	Life		
	Premium Rs. For six months. From 19th July, 1864.		

Mr. J. D. Bell was for *Mr. Fagan*.

Mr. G. O. Morgan, Q.C., (*Mr. Lemon* with him) was for the *Medical*.

Mr. Bell contended that there must be mutuality, and that acceptance of the offer made by the circular, which was not admitted, was necessary to constitute a contract under which the *Albert* could have been sued on the policy. There was a fund constituted to secure that class of persons who did not intend to come in under the offer. It was like the case of an application for shares. He referred to

Griffith's Case, L. R. 6 Ch. 374.

LORD CAIRNS :—It is not necessary for me to attempt to add to the high authority of that case; but I may say that I should have arrived at the same conclusion as the Lords-Justices in that case.

Mr. Bell :—There being peculiar elements in this circular, it will be consistent with other decisions to hold that the payment of premiums under it does not amount to a taking over of the *Albert*. He referred to

Spencer's Case, L. R. 6 Ch. 362.

Mr. Morgan :—*Mr. Fagan*, having done what he has done and paid his premiums without objection, would be entitled, if the

Albert were prosperous, to sue them for the amount of his policy, and the *Albert* would have no answer. He referred to

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Times Case, L. R. 5 Ch. 381,

as shewing the effect of payment of premiums.

LORD CAIRNS:—I have acted in all the cases on the principle that payment of premiums is a material element, but not conclusive,—an equivocal act, which has to be explained, either for or against the transfer of liability, by all the circumstances which preceded the payment of premiums.

Mr. *Morgan*:—It throws on the party denying novation the burden of shewing that his case is an exception to the general rule. He referred to

Manchester and London Case, L. R. 5 Ch. 640.

Mr. *Bell*, in reply.

LORD CAIRNS:—There is no doubt that after the amalgamation of the *Medical* with the *Albert* it would have been entirely in the power of any policy-holder to have said to the *Albert* on the occasion of paying a premium: You must understand that this premium is not paid to you with a view of it being mixed in your assets, or on the footing of my considering myself as now insured by you; but it is paid to you simply because I understand that you are carrying on at your office the business of the *Medical*, in which company I am insured, and to which alone I look. The policy-holder might have done that. And if he had done that, in consequence of the provisions of the deed of amalgamation between the *Albert* and the *Medical*, the *Albert* would have had a right to say: We quite understand what you mean; we are entitled to receive the premium; you are entitled to pay it in the sense in which you say you pay it; here is the deed which says, that, if you decline to take our insurance, still the premium paid here will keep alive your remedy against the *Medical*. That is all, as it seems to me, that can be said as to the deed of amalgamation. It is a deed which would have had that effect in such a case as I suppose. But that deed

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cannot have any operation in altering whatever might be the legal consequences of the acts of a policy-holder who does not act in the way I have supposed, but acts in a way entirely different.

The way in which Mr. *Fagan* acted was this: He got a circular which gave him this information, among other things, that the business of the *Medical* had been amalgamated with that of the *Albert*, and that thenceforth the operations of both companies would be carried on under the style of the *Albert and Medical*. It said:

The combined office, which is now one of the largest Life Assurance institutions in the world, has an annual income from premiums of 22 lakhs of rupees; its accumulated fund exceeds 50 lakhs; while the new business from premiums is progressing at the rate of 2½ lakhs per annum.

Stopping there, no one could doubt that the representation in this circular was: We intend to proceed on the footing of putting all our premiums together, putting all our insurance funds together, and we are now advertising ourselves to the world as two companies, which have in that way combined their funds, without keeping alive any longer any separate claim on each, but on the contrary, offering to all the policy-holders in both the united security of the premiums and insurance fund of both. Then it goes on to say:—

The Indian branch will continue under the same administration as heretofore. A secretary is on his way to *Madras* to act with the board there, while a board of directors and secretary are also about to be appointed for *Bombay*.

The funds of the branch will be put up in trust as an additional security to policy-holders in this country, all claims occurring after the 21st of September last, the date of the amalgamation, being paid from the funds of the new association.

Now what is the meaning of saying that the funds of the branch will be put in trust as an additional security to policy-holders in this country, the policy-holders in the *Medical*? A security additional to what? It could not mean in addition to the security they already had, because these funds that were to be put in trust were the very security they already had. It must mean in addition to something *dehors* this fund, *dehors* the *Medical* fund, and there is nothing else to which it could relate but the security that they would get by becoming insured in the new company. The offer is as intelligible as possible: You will have the security of all the funds that the two companies can put together for the purpose of their

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new business, their amalgamated business; but, over and above that, you will have the additional security which is to be created for the Indian policy-holders of the *Medical*, through the medium of a trust to be declared of the *Medical* fund for those policy-holders. And then all the while you have that additional security, all claims occurring, that is, in the *Medical*, after the 21st September last, the date of the amalgamation, will be paid from the funds of the new association, which explains what the additional security was. You have first the promise, the engagement, that if your claim should become due after 21 September last it will be met by the funds of the new association; if that is not sufficient, you will have the additional security of the trust fund created for the *Medical* policy-holders out of the Indian fund. If that was all, and if premiums were paid on the footing of that offer, it was simply an act done by way of acceptance of the offer. No other construction can be put on the payment of the premiums. But the circular goes on to say :

Policies in this company will be issued free from expense in exchange for those in the *Medical Society*, without any alteration in the terms and conditions of the latter, and if any policy-holder should have assigned his policy by any legal instrument in settlement, mortgage, or otherwise, so as to render substitution difficult, an endorsement will be made on the policy, securing the responsibility and guarantee of this company for the fulfilment of the existing contract.

The directors in this branch would recommend policy-holders in the *Medical* to convert their policies into policies of this company, or to have them indorsed as above suggested.

Now, the words are very peculiar there: the directors in this branch would recommend policy-holders to convert; that does not mean: We will endeavour to persuade you to enter into this contract which we offer you. That must stand on the earlier part of the document; this refers to the mere mode and form in which the new arrangement was to be carried out. We recommend you to do that in one of two ways, either exchange your policy, or get it indorsed; that does not mean to say: If you take our offer, if you pay the premiums on the footing of the offer, you must remember the new company and its funds will not be subject to your claim unless you exchange your policy or have it indorsed. It is: We recommend you either to exchange your policy or to get it indorsed, as the best form, but we leave our offer to be governed by

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whatever may be the rules of law applicable to it, even if you do not adopt that form which we consider the best.

It appears to me, after this, that Mr. *Fagan*, without remonstrance or protest, having simply paid his premiums, and taken *Albert* receipts, having embraced the offer made by the proposal, must rank as against the *Albert*, without prejudice to any benefit to which he may be entitled under the trusts of the Indian Trust Fund.

The questions which arise in this case, although governed by the principle of former cases, are somewhat different, and the case may fairly be submitted as a representative case; and that having been so arranged, I will assent to the costs being provided for in the winding-up.

Solicitor for Mr. *Fagan*: Mr. *Lattey*.

Solicitors for *Medical*: Messrs. *Walker, Kendall, & Walker*.

RUSSELL'S CASE.

*List of Contributories—Executors—Lord St. Leonards' Act.*1871
June 24.

Form of entry in list of contributories adopted where executors settled as such claimed the benefit of statutory advertisements for creditors.

THIS was an application (which had been pending in the Court of Chancery on an adjourned summons) for removal from the list of contributories in the *Medical* of Mr. *Oxenham* and others, executors of Mr. *G. C. Russell*, deceased, they having been settled as executors.

Mr. *Russell* died in 1864, being a shareholder in the *Medical*, and having appointed four persons executors, three of whom proved. In November, 1864, they published advertisements under *Lord St. Leonards' Act* (22 & 23 Vict. c. 35, s. 29). No claims were sent in, and thereupon they distributed the estate. They alleged that they were ignorant of their testator being a shareholder in the *Medical*.

Mr. *Whitehorne* was for the executors.

Mr. *Lemon* was for the *Medical*.

Mr. *Whitehorne* referred to

Clegg v. Rowland, L. R. 3 Eq. 368,

and contended that the Act as construed in that case did away with the liability of the executors.

LORD CAIRNS:—The protection of proceedings under *Lord St. Leonards' Act* is merely by way of discharge. When there is an attempt to make you liable by proceeding in equity, they give you a perfect discharge as regards all the assets you have paid away. Under the previous law it would be no discharge while debts are unpaid, to say that you have paid beneficiaries. Under that Act when all its terms are complied with, you would be

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—

allowed in discharge all you had paid away, and you would be under no liability in regard to that.

Mr. *Whitehorne*:—The discharge by the Act extends to the liability to be sued. They are here made liable *quâ* executors; it is a declaration that *quâ* executors they are liable. The words of the Act are contrary to that. It is a declaration that they shall not be liable as executors at all. To put them on the list as executors, is to contravene *pro tanto* the Act of Parliament.

Mr. *Lemon* was not called on.

LORD CAIRNS:—I shall not attempt to contravene the Act of Parliament, but I think this is not the stage, this is not the particular point of the transaction, to which that would apply. The time when the Act of Parliament can be prayed in aid by the executors will be on accounts being taken. I have no objection to this entry in the list,—The executors allege that they have distributed, under the provisions of 22 & 23 Vict. c. 35, s. 29, the assets of the testator come to their hands.

Solicitors for the Executors: Messrs. *Hume & Bird*.

Solicitors for *Medical*: Messrs. *Walker, Kendall, & Walker*.

GERMAN LIFE ASSURANCE COMPANY'S CASE.

*Policy—Novation—Bonus—Indorsement.*1871
Nov. 25,
Dec. 18.

Novation consequent on amalgamation established, in the circumstances, on two re-insurance policies, against the holder, an insurance company, which, notwithstanding repeated protests reserving rights against the transferor company, afterwards, as regards one of the policies, accepted a bonus from the transferee company, and, as regards the other policy, had it indorsed by the transferee company, with memorandums altering the policy from one with profits into one without profits, and changing the premium from a yearly to a half-yearly one.

THIS was an application, on a Case stated by agreement, for the decision of the Arbitrator on a claim of the *German Life Assurance Company of Lubeck*, to prove against the *Medical* on two re-insurance policies issued by the *Medical*, one dated 13 June, 1851, on the life of Herr *Reinhardt Richter*, and the other dated 30 May, 1855, on the life of Herr *Carl E. G. Ritter*, both with profits.

Sir *Roundell Palmer*, Q.C., (Mr. *C. Walford* with him) was for the *German*. Nov. 25.

Mr. *G. O. Morgan*, Q.C., (Mr. *Lemon* with him) was for the *Medical*.

The following cases were referred to :

Family Endowment Case, L. R. 5 Ch. 118 ;
Spencer's Case, L. R. 6 Ch. 362 ;
Manchester and London Case, L. R. 5 Ch. 640 ;
Griffith's Case, L. R. 6 Ch. 374 ;
Anchor Case, L. R. 5 Ch. 632.

Sir *Roundell Palmer* was heard in reply.

Judgment reserved.

LORD CAIRNS:—This is a case on a claim of the *German Life Assurance Company of Lubeck* against the *Medical*. It arises Dec. 18.

GERMAN LIFE ASSURANCE COMPANY'S CASE. on two policies in the names of *Richter* and *Ritter* respectively; these are only sample policies; several others were effected by the *German Company* with the *Medical* on general contracts, by which the *German* agreed to re-insure with the *Medical* any lives that they (the *German*) required to re-insure; and the re-insurances thus effected were insurances with participation of profits.

The question whether the *German* are entitled to claim in respect of these re-insurances against the *Medical*, or only against the *Albert*, with which the *Medical* is amalgamated, is not a question involving any principle of law different from the principles involved in the cases which have already come before me. The only thing to be considered is the application of those principles of law, which, for the purpose of this arbitration, must be taken as settled, to the facts of this particular case.

In 1860, the *Medical* amalgamated with the *Albert*, and a communication on the subject was made from the *Medical* office to the *German* office at *Lubeck*.

It runs thus, as translated :

MEDICAL INVALID AND GENERAL LIFE ASSURANCE SOCIETY,

25, Pall Mall, London, October, 1860.

We beg hereby to inform you that our managing council, on the ground of the powers vested in them by the statutes of the company, especially §§ 127, 128, as well as in the carrying out of the resolutions which were come to by the shareholders in two general meetings held on the 29th August and 21st September last, have concluded an agreement with the *Albert Life Insurance Company*, in accordance with which the business of both companies will be carried on henceforth under the name, *Albert and Medical Life Assurance Company*.

These united companies enter for the future into all the rights and obligations of the *Medical Invalid and General Life Assurance*.

According to the agreement, the accumulated funds of our society are to be invested separately and securely to meet its own liabilities, and the policy-holders will be offered a greatly additional security in the combined income of the united societies of more than £220,000 (fl. 2,640,000) and the responsibility of a numerous and respectable proprietary.

The *Albert Company* has agreed to exchange the policies of our society for new policies of the *Albert and Medical Life Assurance Company*, at the same premiums as hitherto paid, and without any alteration in the dates of payment or conditions of the now-existing policies.

In those cases where a policy shall have been transferred as security in mort-

gage or otherwise by legal deed of assignment, so that the exchange would be difficult, an endorsement can be made on the policy for securing the full responsibility of the *Albert and Medical Life Assurance Company* for the fulfilment of existing obligations.

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The *Albert Society* was founded in 1838, since when four divisions of profits have taken place, which amounted to from 25 per cent. to 50 per cent. of the premiums paid in. The next estimate of dividend will be made at the end of 1861, and future ones will be made triennially from that time. All *Medical Invalid and General Life Assurance Society* with-profit policies will consequently partake of the dividend of 1861, while, according to the statutes of this society, the next dividend would not be declared until two years later.

By the combination of the businesses of the two companies, a very considerable saving in the expenses of management will be secured, which must materially increase the bonus-giving power of the amalgamated company, and offer so much the more improved prospects to the assured.

At the two very numerous attended meetings of the shareholders of the society, many of whom are large policy-holders, it was unanimously considered that the agreement made is highly advantageous for the assured, partly in consideration of their undoubted security, and partly because of the favourable prospects afforded of future dividends. The council of management is likewise of the same opinion, and confidently trusts that by the acceptance of policies of the united companies the interests of policy-holders will be materially improved. . . .

This circular appears to me to have stated very clearly to the *German* the conditions of the amalgamation, and to have offered them terms which they might have refused or accepted as they pleased; and it held out particularly as an inducement to them the prospect of their receiving a bonus or dividend at an earlier period, if they became insured in the *Albert*, than the time when they would receive one if they remained insured in the *Medical*.

Before adverting to the course of the correspondence from this time forward, I ought to observe once for all that it appears to me to be not unimportant to remember that the letters to which I am about to refer passed not between an insurance company and a member of what I may term the outside public, but between two insurance companies,—between, as it were, two experts in the art and details of insurance, both of whom were perfectly conversant with all the particulars of their own trade, and with the language in which the statements in the correspondence were expressed.

We find, on 23 November, 1860, the *German* acknowledging the

GERMAN LIFE ASSURANCE COMPANY'S CASE. communication of October, 1860, putting certain questions as to the funds, and as to the statements made in the circular concerning the application of those funds, and then adding this:

We beg one other question. To whom shall we pay the amounts of premiums due on 1 December, in case we cannot resolve by then to acknowledge the new-formed company as our contractor? Lastly, we beg of you, for the maintenance of the pretensions and claims which are due to us as regards the *Medical*, arising from the re-insurance contracts agreed to between ourselves and this company, to present before the proper quarter our formal protest against the substitution of another debtor, which we herewith formally pronounce.

That letter, it is sufficient to observe, shews in the clearest way the appreciation by the *German* of what was proposed. It shews their knowledge of what their rights were, and it shews their intention not to relinquish those rights without being completely satisfied. Lastly, the letter is one which does not profess to be a final election to have no business connections with the new or amalgamated company, but merely purports to be a reservation of their rights,—a protest against the present relinquishment of their rights,—until they should have the information which they ask for in the other parts of the letter.

I refer next to the more formal protest before a notary public made by the *German* on 7 December, 1860. In that formal protest, the *German* declare that they reserve all rights, accruing to them under their re-insurance contracts, against the amalgamation entered into between the *Medical* and the *Albert*, and the transformation of the first, that is the *Medical*, into an *Albert and Medical*; that they (that is, the *German*) do not acknowledge this last-mentioned company (that is, the new *Albert and Medical*) as their contracting party, the more so as they consider their contracting party, the *Medical*, to be dissolved and in liquidation, in accordance with the decision of the general meeting of the company of 21 September, 1860, and articles 127 and 128 of the statutes of the *Medical*; and that therefore only provisionally, and until the determination of such liquidation, the *German* therewith pay and will pay the premiums falling due in the meantime to the general agent of the *Medical*, Mr. *Varrentrapp*, of *Frankfort*. Here again I may observe, in passing, that the form of this

protest shews, in the first place, that the reservation of rights was only a provisional reservation, until the protesting party should come to a final determination as to what they would do; and further, that the protesting party take notice that in their opinion the *Medical* were dissolved and in liquidation, in accordance with the resolutions come to at their meetings.

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Then, we have a letter of 11 December, 1860, from the *Medical* chief agent in *Germany*, to the *German*, and an inclosure professing to give certain answers to the demands made for information as to what had been done with the life assurance fund and the other funds of the *Medical*. On 21 December, 1860, the *German* write again to the *Medical* agent, stating that a certain prospectus had not been inclosed, which had been referred to in one of the last letters. They say:

We regret this the more, because, perhaps, we might have been enabled to obtain from it a satisfactory elucidation of certain points which is wanting in what particulars are before us, but which is absolutely necessary before we can resolve upon entering into regular business connections with the new company.

And then they repeat their demand for certain further information. On 27 December, 1860, the *Medical* agent writes that the prospectus which had been overlooked had been sent by book post. And then we have another letter of the same date from the *Medical* agent to the *German*. That letter professes to give certain further information with regard to the funds of the new company, and it contains this paragraph:

The alteration (exchange) of the policies is indeed optional with the assured. They are not compelled thereto. However, the transfer of the assurances, in spite of the assured, is allowed by clauses 127, 128 of the statutes of the *Medical*.

Then on 10 January, 1861, the agent of the *Medical* writes to the *German*, using these words:

As you in your last letter to me, varying the style, address me as general agent of the *Life Assurance Company for Healthy and Invalids*, I beg to remark that the *Medical Invalid and General Life Assurance Company* no more exists, but I am general agent of the *Albert and Medical Life Assurance Company*, which likewise is an insurance company for healthy and invalid lives.

On 25 January, 1861, the *German* write to say that the informa-

GERMAN LIFE ASSURANCE COMPANY'S CASE. tion, which I have thus shortly referred to, contained in these previous letters—

Has not only not removed, but much strengthened, our manifold scruples with reference to the recognition of this act [the act of amalgamation] since we gather therefrom that the direction of the new company is reluctant to give those interested the elucidation wished for, and to permit a complete insight into their circumstances.

Then they revert to the points on which they had asked for information before, and declare that they maintain their original rights.

I come next to a letter of 4 June, 1861, to the *German* from the *Medical* agent, apologizing for not having sent the information required, which he had asked the secretary in *London* for, but had not yet received. Then I pass on to October, 1861, when Mr. *Lewine* of *Berlin* was substituted for Mr. *Varrentrapp* as the general agent in *Germany* for the *Albert and Medical*. I do not think anything very material turns on that. Then on 8 November, 1861, the *German* write to Mr. *Lewine*, and they say, taking note of the change of agency:

Before, however, we enter into this connection, we find ourselves prompted to repeat positively the protest of 7 December, 1860, delivered to the representative at this place of your company, Herr *H. C. Koch*, as proxy of Herr *J. A. Varrentrapp*. In conformity to the same, we cannot agree to give up a single one of the rights acquired to us according to the [re-insurance] contracts . . . ; especially not, when thereby the course of business becomes essentially more difficult. This would undoubtedly be the case if the exchange of claim-money and premiums against policy and receipts, and the comparison of the original documents with the copies sent in, take place no longer here through your agent, but must be performed in *Berlin*.

Matters remained in that state until the year 1863, and if in that state of matters the question had come before me for decision, I should have been of opinion that there had been no election on the part of the *German* to accept the *Albert* as their debtor in place of the *Medical*. I should have considered that even the lapse of two or three years, and the payment of premiums during that time to the agent of the *Medical*, the matter having been left *in ambiguo* by the protest which required information, were not sufficient to have changed the position of the *German* from credi-

tors of the *Medical* into creditors of the *Albert*. But in 1863, this further state of things arose. On 1 May, 1863, the local agent at *Lubeck* of the *Albert and Medical* wrote to the *German*, saying :

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Enclosed I hand you thirteen acquitted receipts of the *Albert and Medical Life Assurance Company* :

and then comes an enumeration of receipts for the premiums on certain policies, the total amount being between 700 and 800 thalers; and then the letter goes on :

which amount, finding correct, please hand me. Further, you receive herewith, according to your wish, eighty-one circulars concerning the division of profits. Requesting to do the needful herein, yours, &c., *H. C. Koch*.

The circular, of which eighty-one copies were thus stated to be inclosed is headed and begins thus :

Berlin, April, 1863. Policy No. , on the life of . *Albert Life Insurance Company*, 7, *Waterloo Place*, *Pall Mall*. Referring to the contents of my circular of February last, I have the honour to inform you that the appropriation of the dividend is completed, and it depends on your choice whether you prefer a cash payment of your share, or will leave the same in the hands of the company, and thereby increase the sum insured coming to you at some future time.

I pause there to say that although this professes to refer to the contents of a circular of February, that circular is not forthcoming either from the papers of the *Albert* or from the papers of the *German*. I am not, therefore, entitled to assume as matter of certainty that such a circular was sent. But in the letter of 1 May, 1863, addressed to the *German*, there was this statement made to them, which was not in any way repudiated by them :

You receive herewith, according to your wish, eighty-one circulars concerning the division of profits.

What does that mean? Can it mean anything but this, that in some way the attention of the *German* had been called antecedently to the fact that there was a division of profits pending, and that they had requested that these circulars which were sent should be sent to them, circulars professing to deal with the bonus which had been declared or was about to be declared. It must therefore be assumed against the *German* that in some way or

GERMAN LIFE ASSURANCE COMPANY'S CASE. other they were aware that there was a bonus about to be declared, and that they requested these circulars to be sent to them.

The circular of April, 1863, after pointing out the different ways in which the bonus might be appropriated, either by addition to the sum insured or by cash payment, continues thus :

At the same time I inform you that according to the calculations of Professor *de Morgan* the partition of a sum of nearly £100,000 sterling might have taken place, but that the directorate out of prudence reserved the half until the next time of division. Since the last balance-sheet an important widening of the insurance circle has taken place, and the most satisfactory results allow us to hope for more favourable dividends. With the conscientiousness of the management so well known to you, you can understand from the issuing in one year of 2235 policies for a sum insured of Th. 5,637,840, and a yearly premium of Th. 228,607, the common sympathy which the company everywhere enjoys.

It appears to me that this transaction is the turning point of the case, and I think Sir *Roundell Palmer* must have felt it to be so, because he endeavoured to shew that the *German* might have misunderstood the meaning of this letter, and might have supposed that it was nothing more than a statement that out of the old fund of the *Medical*, kept apart and isolated and reserved for the original *Medical* policy-holders, some profit had been made, and that this was being divided as a *Medical* profit among the old *Medical* policy-holders. Now, the receipts given by the *German* for this bonus were in this form, signed by their agent :

ALBERT LIFE ASSURANCE COMPANY, LONDON.

7, Waterloo Place, Pall Mall.

I have duly received in cash from the *Albert Life Assurance Company, London*, through their head office, 61A, *Jägerstrasse, Berlin*, 62 thalers, Prussian currency, which amount has accrued as dividend for the period up to the end of December, 1861, on policy No. 3187, for 5000 thalers, taken out on the life of Herr *R. Richter*.

Berlin, 18 May, 1863.

Then, coupling that receipt with the circular of April, which I have read,—coupling the circular with the fact that it (being a circular relating to appropriation of bonus) had been sent in pursuance of a wish expressed on the part of the *German*,—coupling the receipt and the circular with the original notice of October, 1860, which said that there would be a division of profits for the

period ending in 1861, a period earlier than that at which there would have been any division of profits in the *Medical* alone,—and coupling the whole with the fact on which I have already observed, that this was not a transaction between an insurance office and a member of the public, who might be ignorant of insurance matters, but was a transaction between two insurance companies,—I have not the slightest hesitation in saying that I read the documents as the clearest and most perfect communication to the *German* that a bonus was being declared out of the profits of the *Albert*. Further, I think it impossible to suppose that the *German* could have imagined that it was *Medical* profits, or profits of any part of the *Medical* funds, which were being divided, because they themselves in their notarial protest had said, in effect: We understand that the *Medical* office is dead and gone; it is at an end; it is in liquidation merely; it has ceased to carry on business. Therefore they could not have imagined that this circular, speaking of so many policies, between 2000 and 3000 new policies, issued in the year, could have meant policies issued by the *Medical*. They must have known that it meant policies issued by the company sending the circular, and that the same company were dividing their own profits. I, therefore, without dwelling further on it, read this circular just in the same way as if it had said clearly and distinctly: We give you notice that the *Albert* are making a division of their profits; we give you notice, treating you as policy-holders in the *Albert*, that so much of those profits will accrue to your policies; and we now ask you to tell us how you will have those bonuses, whether in the shape of accretions to your policies or of payment in cash.

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—

That being, in my opinion, the proper construction of the documents, and the construction which must have been put on them by the *German*, let us see what the *German* do in answer to these communications. On 2 May, 1863, they write to the agent of the *Albert and Medical*, and first noticing a claim in the case of a man called *Berliner*, the life in one of their policies, they say:

The dividend certificate on this policy under the last division is wanting, and we beg for the delivery thereof:

GERMAN LIFE and they conclude thus :

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Reserving our remarks as to the dividend certificates received in your favour of yesterday.

Then, on 9 May, they write :

Referring to our last of the 2nd instant, according to which we reserved our remarks on the eighty-one dividend certificates contained in your favour of 1st, we now return to the subject. Besides the dividend certificates for *Berliner*, No. 8006, 2276, meanwhile deceased, for the delivery of which we have already asked, we still want the certificate for the dividends in the following, some of them still existing, policies.

And they point out several in respect of which the dividend certificates had not been sent to them, and they add this :

Of the two ways of applying the dividend put to the assured, we have decided for the second, and hand you the eighty-one corresponding declarations accordingly, with the request that you will desire Herr *George Lewine* to pay the total amount of Ct. Th. 3341. 6. 6. for our account to *F. Mart, Magnus of Berlin*.

Therefore nothing can be clearer than this, that they accepted the bonuses; they chose to have them paid in cash; and in my opinion they did this with their eyes open, and knowing from what source the bonuses came. Now, if it had stopped there, it appears to me that it would have been the clear case of a bonus accepted, with full knowledge, out of the *Albert* funds. But something is said to have happened afterwards, qualifying the effect of this reception of the bonus.

On 7 May, 1863, Mr. *Lewine* writes a letter to the *German*, saying that the *Albert* had decided that the old style, *Albert Life Assurance Company*, was to be restored; and that if, in spite of that, for some time to come, the *German* received receipts under the heading *Albert and Medical*, it was only because they were using up the old forms; and, further, saying :

I think now, under your management, the appropriate time has arrived; and as I may well assume that the *Albert Company*, by promptly taking up the business of your place, has won your confidence, I beg you to give it assurances as you did formerly to the *Medical*.

In answer to that, the *German* (by Mr. *Wichmann*) write on 23 May, 1863, and say :

I confirm the receipt of yours of 7th inst., from which I observe the new style of your company, and in which you request new re-insurance proposals. In which

LORD CAIRNS'S DECISIONS.

respect I regret I can hold out little hopes, since the [*German*] company latterly GERMAN ASSURANCE COMPANY, CALIF. only seeks re-insurance in cases of very great necessity, and as a rule does not accept a larger sum than it is allowed to bear itself.

I take that as noting the change in the title, making no objection to that, and not saying with regard to the solicitation for re-insurances: We have nothing to say to you, the *Albert*, the only persons we contract with are the *Medical*, and we do not choose to enter into any new relations,—but making a courteous statement that there was not much probability of re-insurances, not because they had not confidence in the *Albert*, but because there were very few re-insurances to be given. At this time the bonus on the eighty-one policies had not been paid. The payment, however, took place before 29 May, 1863, on all but three policies, and those three bonuses were afterwards paid in July, 1863, and in April, 1864.

Next, in a letter of 1 August, 1863, Mr. *Lewine* sends, in a circular dated 5 June, 1863, formal notice of the change of name, which he had in a less formal way announced on 7 May. Then, in answer to this, on 3 August, 1863, a letter was written by the *German*, the concluding paragraph of which was relied on on their behalf. By this time the bonuses had all been paid, with the exception of the one which was not paid till April, 1864; and then at the end of this letter, the earlier part of which is itself taken up with an adjustment of the amounts of the bonuses, there is thrown in this paragraph:

We have, under repeated reference to our declarations of 7 December, 1860, and 8 November, 1861, taken note of the circular received.

The declarations of December, 1860, and November, 1861, were the protests I read. And it was said this was a repetition of the protests, and that the *German* were thereby rehabilitated and put in as good a condition as they were when those protests were issued. I am not of that opinion. I think it was too late to protest any longer. They had done an act which was inconsistent with protests. They had accepted their aliquot share of the profits of the *Albert* as persons insured in the *Albert*. It was too late after doing that to go back on protests which were merely reserving their rights, and to say: We will take all the benefits and advan-

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tages offered to those insured in the *Albert*, and we will renew the protests after taking the money, and continue the reservation of rights as against the *Medical*. It was impossible to do that. They might have refused the bonus, and might have stood on their protests. But it never was offered to them, both to take the bonus and to stand on their rights against the *Medical*. They were offered one or the other, and they having accepted the one it was too late to fall back on the other.

But I ought to say that this is the only fragment of evidence I find of any desire to maintain their original protests. From this time forward I find none. This was in August, 1863. Six years elapsed before the failure of the *Albert*, and not a single recurrence was made to these protests from this time forward. On the contrary, in the first place, as I have said already, in April, 1864, a bonus which had not been paid in 1863 was paid in respect of one policy; a bonus which completed the whole of the payments. In the next place, in 1865, one of the policies, the policy of *Ritter*, was changed from a policy with profits into a policy without profits; and beyond all doubt that new policy was a policy effected with the *Albert*. But further than that, in February, 1865, I find the *German* writing thus:

After [according to] section 7 of the [re-insurance] contract of 7 February, 1849, between the *General, Medical, and Invalid Society* and us, in which you have now entered into the position of the former society, the said society bound itself

and so forth.

What does that mean? It surely means, if words have any meaning: You, the *Albert*, have taken the place of the *Medical*; in our general re-insurance contract you have become the contractors with us in place of the *Medical*. And again, on 21 April, 1865, the agent of the *German* wrote with respect to the same contract of 7 February, 1849:

According to section 7 of this contract the same rights are due to our company with respect to its co-contractor [contractor], into whose position the *Albert* has now entered

and so on.

I think, therefore, that if it had stopped at the acceptance of the

bonus in 1863 there would clearly be a case, in which, on all principle and on all authority, the *German* must be held to have accepted the *Albert* as their debtors in the place of the *Medical*. I think if we look to what passed after 1863, the receipt of the bonus in 1864, the new insurance in the case of *Ritter*, and the express statement that the *Albert* had succeeded the *Medical* in the re-insurance contracts, there is the strongest confirmation of that which if it stopped at the year 1863 would alone have been sufficient.

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On the second policy, to which the present case relates—that on the life of *Ritter*—I have not entertained a doubt. It bears two indorsements by the *Albert Company*, one converting the policy into a non-participating policy, and the other substituting a half-yearly for a yearly payment of premiums. The indorsements, as translated, read thus:

Memorandum.—Since on the ground of a proposal with the *German Life Insurance Company* in *Lubeck*, this last have converted the herewith insurance contract . . . into one . . . without participation in profits; the future yearly premium due on every 2nd day of March amounts to 21 thalers 7 silver groschens . . . and the assured renounces a corresponding consideration as surrender.

Done in *London*, September 11, 1861.

W. PAGE PHILLIPS,	} Directors.
W. JOHNS,	
G. G. KIRBY,	

Memorandum.—It is hereby fixed, that on the ground of a proposal of Herr C. E. G. *Ritter*, the premium of 21 thalers 7 silver groschens hitherto paid yearly on this policy, from henceforward will be paid half yearly, on 2nd March and 2nd September each year, with 10 thalers and 22 silver groschens.

London, Feb. 22, 1865.

FRANK EASUM, Secretary.

Before the first indorsement the agent of the *German* had written to the agent of the *Albert and Medical* thus:

Lubeck, 25th May, 1861.

Herr Carl E. G. *Ritter*, of *Wennerden*, insured with us under No. 10,014, has lately proposed to have the policy in question changed, so that it may be ruled by the statutes of the revision of the year 1857. In accordance with which, the same will be insured henceforth without claims on dividends, under renunciation of a corresponding surrender value; but the calculation of the future premiums to be made on the ground, not of his present, but of his former age of 27 years, when he would have to pay fl. 1.55 three per cent. per annum of premium for his insurance, or fl. 77.10, instead of, as formerly, fl. 100. Since, on the said

GERMAN LIFE policy, th. 1100 have been undertaken in re-insurance by your company No. 8004, G. 2274, we beg to ask you whether the said alteration is agreeable to you? . . .

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To which the answer was :

Referring to mine of the 30th ulto., I do not fail to advise you that, in reply to your inquiry of the 25th ulto., the *Albert and Medical* has declared itself ready to follow you with regard to the policy No. 8004, G. 2274, *Ritter*, and do that which you yourselves shall do in this insurance.

You will, therefore, inform me of any alteration you may effect in the *Ritter* insurance, and send me in the *Medical* policy, in order that a corresponding indorsement may be made thereon, which will be best carried out if you send me the wording of the alteration of your policy as precisely as possible.

So, before the second indorsement, the agent of the *German* wrote thus to the agent of the *Albert* :

Lubeck, 7th February, 1865.

Having, on the proposal of *C. E. G. Ritter*, re-insured with the *Albert Life Assurance Society* under policy 8004, G. 2274, substituted from 2 March inst. a half-yearly premium for the hitherto yearly one, and having indorsed the (*original*) policy accordingly, we hand you the said policy 8004, G. 2274 with the request that you will indorse it likewise for half-yearly payments, after which from 2nd March, 1865, forward, on each 2 March and 2 September, for first time on 2nd March next, a premium of Ct. Th. 10.22 will have to be paid by us on the said policy . . .

And this was the answer :

Replying to your favour of 7th inst., policy No. 8004, G. 2274, *C. E. G. Ritter*, is returned you herewith, furnished with the desired alterations.

This is clearly a substituted contract with the *Albert*.

I am, therefore, obliged to hold that, on all the claims, the *German* must rank against the *Albert*, and not against the *Medical*.

It is a case in which it was necessary to investigate the claims. Therefore I do not propose to make the claimants pay costs.

Solicitor for *German* : Mr. A. Beddall.

Solicitors for *Medical* : Messrs. Walker, Kendall, & Walker.

BUTLER'S CASE.

1871

June 24.

Policy—Novation—Payment of Premiums—Bonus—Indorsement.

Novation consequent on amalgamation established, in the circumstances, against an insurance company, which, holding re-insurance policies, and having received on the amalgamation a circular setting forth advantages to be derived by policy-holders from the amalgamation, (1) paid premiums to the transferee company and took receipts of the transferee company; and (2) as regards policies with profits, had them indorsed by the transferee company with a memorandum embodying an agreement for the refunding to the re-insuring company of sums representing the differences between premiums on the with-profit and the without-profit scales, in consideration of the re-insuring company having surrendered all claim to share in the profits of the transferee company.

THIS was an application for the decision of the Arbitrator on the claim (which had been pending in the Court of Chancery) of Mr. Butler, representing the *East of England Mutual Life Assurance Society*, to prove against the *Medical* on five re-insurance policies.

Mr. Fry, Q.C., was for Mr. Butler.

Mr. G. O. Morgan, Q.C., (Mr. Lemon with him) was for the *Medical*.

Mr. Fry referred to

Times Case, L. R. 5 Ch. 381.

Griffith's Case, L. R. 6 Ch. 374.

Mr. Morgan was not called on.

LORD CAIRNS:—Several cases have come before me on the question of the substitution of the liability of the *Albert* for that of one of the companies absorbed by it, presenting features of some difficulty, and very proper for argument, but I must say that no

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case has come before me in which a claim has been made against an absorbed company presenting the features which this claim does.

Mr. *Butler*, representing an insurance company, not acting as an individual, had re-insured with the *Medical* five lives that had been insured in his own office. He received, or his company received, the circular of October, 1860. The purport of the whole circular was clearly to inform Mr. *Butler* or his company that the amalgamation had taken place between the *Albert* and the *Medical*; that there was to be one fund for the future; and that great advantages, as was supposed, would arise to those interested in the *Medical* from the amalgamation of that company with the *Albert*. The circular further stated :

The *Albert Company* has agreed to issue policies in exchange for those of this society at the same rate of premium as that now payable on the policies effected in this office, without any alteration of the terms or conditions of the present policies; and if any policy-holder should have assigned his policy by any legal instrument in settlement, mortgage, or otherwise, so as to render substitution difficult, an endorsement can be made on the policy securing the full responsibility and guarantee of the *Albert and Medical Life Assurance Company* for the fulfilment of the existing contract.

In that state of things, and putting aside for the moment the correspondence, I have next to observe that Mr. *Butler*, acting for his company, paid the premiums on these policies from time to time, as they became due, to the *Albert*. The form of the receipt ultimately taken was simply an *Albert* receipt, as on an *Albert* insurance, in the name of the *Albert*, and signed by the officers of the *Albert*, without qualification of any kind. The earlier receipts had specified this, that the sum received was the premium 'according to the tenour of the policy above enumerated, and issued by the *Medical* . . on the life of' so and so. But it was an *Albert* receipt and signed by the *Albert* officers. The reference to the tenour of the policy issued by the *Medical* would be quite consistent with the circular; for what the *Albert* by that circular offered to give was an insurance, without alteration of the terms or conditions of the present policies, that is, of the *Medical* policies. Therefore it was quite consistent with that offer to give a receipt according to the tenour of the original policy, there having been at that time no *Albert* policy in point of form substituted for the original one. If the matter rested there, it appears to

me that the case would be covered by decision. It would be the simple case of an offer made to a *Medical* policy-holder by the circular, and accepted by him, as testified by his subsequent action, namely, by his coming to the *Albert*, and, without remonstrance or explanation, paying from time to time the premiums due on his policies, taking *Albert* receipts.

But the matter does not rest there. Four of these policies were policies participating in profits. The time arrived at which the *Albert* made an estimate of their profits; declared, as they supposed, out of the profits, a bonus to all the policy-holders insured in the company, including the *Medical* policy-holders, whose insurances the *Albert* had taken over. The fact of that bonus was communicated to the participating policy-holders, and among the rest to the company of Mr. *Butler*. Thereupon a correspondence ensued. In substance it was a remonstrance by the company of Mr. *Butler*, founded on this, that while they were paying a bonus on a particular scale on the lives that had been primarily insured by them, they were being offered by the *Albert* bonuses which they considered disproportionate to the bonuses which they themselves were paying, and that the transaction was not to them the species of practical re-insurance which they had looked for and hoped for. Ultimately an arrangement was proposed which was assented to; under which the company of Mr. *Butler* were not to take the bonuses in that form, but the policies were to be changed from participating to non-participating policies, and certain alterations, the details of which are immaterial, were to be made with reference to the premiums and certain payments as to the past. On 27 June, 1864, the correspondence in substance ended in this way: Mr. *Butler*, writing as secretary of his company to Mr. *Easum*, the secretary of the *Albert*, says:

I also send policies on *Wilkinson*, *Baker*, *Basire*, and *Algar* [the four participating policies here] for endorsement, according to the new arrangement, together with a statement of account, shewing the difference of premium to be refunded by you. Please also have endorsed upon these policies the bonuses that have been allotted to each by the *Medical Invalid Life Office* and yourselves, and return them to me as soon as convenient.

The policies are returned with indorsements, which are received

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without any remonstrance by Mr. *Butler*, and of which this is a sample :

ALBERT LIFE ASSURANCE COMPANY.

Memorandum. 30th June, 1864. The sum of £6 1s. 3d. is hereby agreed to be refunded to the within-named *East of England Mutual Life Assurance Society*, in consideration of the said society having surrendered all claim to share in the profits of this company, in respect of the within assurance, from and after the 31st December, 1861, and it is hereby declared that the annual premium payable in respect of the within assurance is reduced to the without-profit rate of £28 3s. 4d., in lieu of the with-profit rate of £30 3s. 4d. within mentioned.

(Signed) FRANK EASUM, Secretary.

Now, I asked the question, what does this mean? what is the meaning of the *East of England Mutual Life Assurance Society* surrendering for a money consideration, which is paid to them, which they receive and put into their coffers, all claim to share in the profits of the *Albert* in respect of this assurance, and now coming forward and saying they have not and never had anything to say to the *Albert*, and that their claim is against the *Medical*? It seems to me that as regards those four policies it is under-stating the thing very much to say that no question could arise.

I am, therefore, of opinion that Mr. *Butler* has no claim against the *Medical*, that his claim is against the *Albert* only, and that his application must be dismissed with costs.

Solicitors for Mr. *Butler* : Messrs. *Hook & Street*.

Solicitors for *Medical* : Messrs. *Walker, Kendall, & Walker*.

BALFOUR'S CASE.

1871

Dec. 18.

Policy—Novation—Indorsement—Marriage Settlement—Trustees.

A policy was effected in the names of three trustees in contemplation of marriage; the husband covenanted by the marriage settlement to keep on foot the policy, or some other policy or policies to the like amount, in some well-reputed office; the husband and one of the trustees were partners in business; the policy was kept by the trustee in a safe used for the business, to which both partners had access, and which contained also papers belonging to the partners individually; after the amalgamation of the assuring company with the *Albert*, an indorsement was put on the policy by the *Albert*, accepting the liability under the policy; the husband and one of the trustees were dead; the surviving trustees claimed to prove on the policy against the assuring company:

Held, that the claim was not maintainable, the trustees being, in the circumstances, bound by the indorsement.

THIS was an application, on a Case stated by agreement, for the decision of the Arbitrator on the claim of *Mr. M. Balfour* and *Mr. J. H. Robinson* to prove against the *Family Endowment* on a policy.

The policy was dated 4 January, 1861, No. 2780, and was issued by the *Family Endowment, Indian Branch*, for 30,000 rupees on the life of *Mr. L. Balfour*, in favour of *Major E. Sissmore* and the claimants.

The policy bore the following indorsement:

ALBERT MEDICAL AND FAMILY ENDOWMENT LIFE ASSURANCE COMPANY.

Calcutta, 7 March, 1863.

No. 70.

The within contract accepted by this company.

By order of the directors,

GORDON STUART & Co., Secretaries.

The policy had been effected with a view to a settlement on the marriage of *Mr. L. Balfour*. A marriage settlement was accordingly executed, dated 22 January, 1861, between *Mr. L. Balfour* of the first part, his intended wife of the second part, and the

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three persons assured, as trustees, of the third part. The material substance of the settlement was as follows :

Recital of an agreement that *L. Balfour* should settle a sum of 40,000 rupees as therein mentioned, and that, for collaterally securing the payment thereof, he should execute a bond as therein mentioned, and effect an insurance on his life for 30,000 rupees in the names of the persons parties of the third part, to be held by them on the trusts thereafter declared.

Recital that he had taken out a policy on his life in the *Family Endowment* for 30,000 rupees, dated 4 Jan. 1861, No. 2780, in the names of the three persons parties of the third part as trustees of the marriage settlement.

Covenants by *L. Balfour* with the trustees that he would pay to them 40,000 rupees on the trusts ;

That he would, as long as that sum remained wholly unpaid, duly pay all premiums for keeping on foot the said policy or some other policy or policies on his life to the aggregate amount of 30,000 rupees at the least, in some well reputed office.

Proviso, that it should not be incumbent on the trustees to see that the policy was kept on foot, and that they should not be answerable in case it should lapse.

Mr. *L. Balfour* and Major *Sissmore* were dead. The surviving trustees, the claimants, made an affidavit, which, after denying notice of the amalgamation of the *Family Endowment*, proceeded as follows :

4. We never, expressly or impliedly, or in any manner, authorized *L. Balfour* or any other person to surrender the said policy, or to procure or allow such endorsement to be made thereon, or to substitute the liability of the *Albert Life Assurance Company* for the liability of the *Family Endowment Society* thereon ; and we are unable to state positively how the indorsement came to be made thereon.

5. I, *J. H. Robinson*, for myself say, that from 1859 to 1866 I was engaged in business in *Calcutta* in co-partnership with *L. Balfour*. The said policy, with the said settlement and other papers and documents relating to the trust by the said settlement imposed, were kept by me in a fire-proof safe used by us in the course of such business. *L. Balfour*, as my partner, was entitled to the use of and had a key and access to such safe, which, in addition to the securities and papers of the partnership, contained some papers and documents belonging to *L. Balfour* and myself personally respectively.

6. I am entirely unable to account in what manner the indorsement came to be placed upon the policy, unless *L. Balfour*, unknown to me and in consequence of such access to the said safe as aforesaid, obtained possession of the policy and procured or allowed such indorsement to be made thereon. His doing so was, in fact, unauthorized by me.

An affidavit was filed on behalf of the liquidators of the *Family Endowment*, made by Mr. *Tait*, formerly Manager of the Indian

Branch of the *Albert Medical and Family Endowment Life Assurance Company*, proving a notice of the amalgamation of the *Family Endowment* with the *Albert and Medical*, sent out by him in June, 1861, to each policy-holder, and inserted in all the principal newspapers in *India*.

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Mr. *H. M. Jackson* was for the claimants.

Mr. *Rodwell* was for the *Family Endowment*.

Mr. *Jackson* admitted that the indorsement would be conclusive if Mr. *L. Balfour* himself had been the holder of the policy ; but submitted that the inference from the known facts was, that the act which led to the indorsement was that of Mr. *L. Balfour* alone, and that it was not binding on the trustees, by whom it was not authorized.

Mr. *Rodwell* was not called on.

LORD CAIRNS :—I do not think there is any pretence for this claim.

Here was a policy effected in the names of three persons, who were trustees. The policy was kept by one of those trustees in a strong box, used, as he says, in the course of his partnership business, to which he had access and to which his partner, Mr. *L. Balfour*, the life assured, also had access. If in that state of things Mr. *L. Balfour* took the policy out of the strong box, and presented himself with it at the office of the *Albert*, and they put this indorsement upon it, and then it was restored to the strong box, I should have been of opinion that even then, if there were nothing more in the case, the trustee who was also a partner would be bound by that which was on the policy. It was in his custody, and, therefore, he ought to have seen what was on the policy, if he had used proper care with regard to it.

But it is not necessary to consider that, because the case goes further. The covenant in the settlement was that Mr. *L. Balfour*

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would pay all such premiums as might become payable for keeping on foot the said policy of insurance, or some other policy or policies of insurance, on his life, to the aggregate amount of 30,000 rupees, at the least, in some well-reputed office. That was the only covenant. Therefore, it was quite optional to him, if he insured in an office of good repute at the time, to fulfil his covenant in that way. But that is not all, because the settlement provided that it should not be incumbent on the trustees to see that the policy was kept on foot, and that they should not be answerable in case it should lapse. Mr. *L. Balfour* was the perfect *dominus* of the question whether he would keep it up or not. The trustees were not bound to see that the premiums were paid. His only covenant was a personal one, which they might or might not enforce, and it was only a covenant to insure in some office of repute. Therefore, he might, if he had chosen, have cancelled this policy altogether, and effected a new one with some office which was well reputed at the time, which the *Albert* clearly was.

I do not think the claim ought to have been made. I cannot do otherwise than order the claimants to pay the costs.

Solicitors for the Claimants: Messrs. *Upton & Co.*

Solicitors for *Family Endowment*: Messrs. *Markby & Tarry.*

FRERE'S AND OTHERS' CASES.

1872

Feb. 12.

Amalgamation—Indemnity—Creditor of transferor Company taking Shares in transferee Company—Marriage Settlement—Trustees.

On an amalgamation of two insurance companies, the transferee company covenanted with the transferor company to indemnify the transferor company against all claims arising from annuities, policies, and other contracts; some holders of contracts of the transferor company, who were also shareholders in that company, on the amalgamation, took by way of exchange for those shares an equivalent number of shares in the transferee company:

Held, that they were not thereby precluded from claiming against the transferor company on the contracts.

Fleming's Case not followed.

THESE were applications for the decision of the Arbitrator on three claims against the *Western*, the first by Mr. C. Frere, the second by Mr. J. Shayler, and the third by Mr. W. Stuart, Mr. T. S. Cocks, and Mr. C. L. Cocks.

Mr. Frere claimed to be admitted a creditor of the *Western* for the value of an annuity granted to him, during the life of A. Neale, by the *Metropolitan Counties*, by a contract dated 2 March, 1860. On the amalgamation of the *Metropolitan Counties* with the *Western*, there had been indorsed on the contract a memorandum declaring that the funds and property of the *Western* should be liable for the due payment of the annuity, but there was no *Albert* indorsement. Mr. Frere was a shareholder in the *Western* at the time of the amalgamation of the *Western* with the *Albert*, and, by way of exchange for his *Western* shares, took an equivalent number of *Albert* shares. He received dividends on these *Albert* shares; but before the order to wind up the *Albert*, namely, in April, 1867, he sold and transferred them; and he had not since been a shareholder in the *Albert*.

Mr. Shayler was admitted in the Court of Chancery as a creditor of the *Western*, for the value of an annuity granted to him by the *Western* by a contract dated 29 September, 1864. The liquidators of the *Western* had given him notice of their intention to apply that his claim might be expunged. The contract

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bore no *Albert* indorsement. He was a shareholder in the *Western* at the time of the amalgamation of the *Western* with the *Albert*, and he then, by way of exchange for his *Western* shares, took an equivalent number of *Albert* shares. He received dividends on these *Albert* shares, and remained an *Albert* shareholder in respect of them.

Mr. *Stuart*, Mr. *T. S. Cocks*, and Mr. *C. L. Cocks*, claimed to be admitted creditors of the *Western* in respect of a policy issued by the *Western*, dated 6 May, 1844, assuring £2550 to Mr. *R. T. Cocks*, on his own life, in consideration of £1000 paid by him at the time of his effecting the policy. The policy bore no *Albert* indorsement. In 1845, Mr. *R. T. Cocks* married, and the policy was put in settlement. The claimants were the three surviving trustees. In 1861 Mr. *R. T. Cocks* was registered as a *Western* shareholder, and he continued a *Western* shareholder until the amalgamation of the *Western* with the *Albert*. Mr. *T. S. Cocks* was a director of and shareholder in the *Western* at the dates of the marriage settlement and amalgamation. On the amalgamation Mr. *R. T. Cocks* and Mr. *T. S. Cocks*, by way of exchange for their *Western* shares, took an equivalent number of *Albert* shares. They received dividends on these *Albert* shares. Except as far as there may have been constructive notice arising from the fact that Mr. *T. S. Cocks* was a director of the *Western*, no notice of the settlement was given to the *Western* until after the order to wind up the *Western*. No notice respecting the amalgamation was issued by or on behalf of the *Western* to Mr. *W. Stuart* or Mr. *C. L. Cocks*.

Mr. *Cookson* was for Mr. *Frere*.

Mr. *Higgins*, Q.C., was for the other claimants.

Mr. *Cracknall* was for the *Western*.

Mr. *Cookson*.:—It is suggested for the *Western* that Mr. *Frere* having been a *Western* shareholder, and having become an *Albert* shareholder, and there being an agreement between the *Western* and the *Albert*, whereby the *Albert* undertook to indemnify the

Western against all claims on the *Western* arising from annuities, policies, and other contracts, and took on themselves all other *Western* liabilities of every description, Mr. *Frere* has undertaken to indemnify himself against his own debt; and

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Fleming's Case, L. R. 6 Ch. 393,

is relied on. But, with great deference, that decision proceeds on a comparison, erroneous for this purpose, between a joint stock company and an ordinary partnership. The indemnity here merely amounts to this, that the joint stock of the *Albert* shall indemnify the joint stock of the *Western*. One legal entity, a joint stock, indemnifies another. The joint stock, which constitutes the indemnity fund, cannot be increased beyond the amount which the shareholders liable to contribute to that fund can be called on to pay. If the joint stock were such that it could be indefinitely increased by an unlimited call, that might amount to a complete indemnity for all purposes, but there is only a limited liability on the *Albert* shareholders; consequently there is only a circumscribed stock devoted to the indemnification of the *Western* joint stock. The case of a partnership is different, because there is unlimited liability on behalf of each partner. Mr. *Frere*, even if he had not parted with his shares, would only be bound to contribute to the *Albert* to a limited extent, the liability of the *Western* remaining to the extent to which the indemnity did not go. But he had parted with his shares before the winding-up of the *Albert*, and all his liability had ceased, at least in respect of the policy-holders, who had notice of the deed.

Mr. *Higgins*:—As regards the claim on Mr. *Cocks's* policy, the only question is, whether or not the case is governed by *Fleming's Case*. The claimants are trustees. By accident one of them, Mr. *T. S. Cocks*, was a shareholder in and a director of the *Western*, and he became an *Albert* shareholder. Also the original policy-holder, Mr. *R. T. Cocks*, became, after the date of the policy, a shareholder in the *Western*, and took *Albert* shares. Not only is the claim by trustees, two of whom are not shareholders, and who had no notice of any proceedings in respect of the policy, but also the persons beneficially interested had nothing to do with the amalgamation, and had no notice thereof.

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In *Shayler's Case* the question again is whether the claim is precluded by the principle of *Fleming's Case*. The doctrine of that case cannot be maintained, and ought not to be applied in this case. Mr. *Shayler* did not become a member of a common law partnership in any ordinary sense of the word. The contract was not a contract that the *Albert* would, without any limitation or qualification, indemnify the *Western* against all liabilities, as a common law partnership would. The *Albert* contracted with the *Western* only in respect of the *Albert* funds. The liability of the *Albert* was limited to the assets of the *Albert*; the liability of each *Albert* shareholder was limited by the contribution he would have to make to the funds of the *Albert*. It cannot be that Mr. *Shayler*, having a claim of the value of upwards of a thousand pounds as against the *Western*, and being liable to contribute to the assets of the *Albert* some thirty pounds in respect of three shares, is for that reason to be held to have given up his claim against the *Western*. The principle of *Fleming's Case* would apply to the case of a man effecting a policy with an office in which he was a shareholder. But, even if the *Albert* were an ordinary common law partnership, the principle of *Fleming's Case* could not be safely applied. The rights as between two common law partnerships would be worked out, each would be wound up on its own footing, and all the rights between the parties to each partnership would be ascertained and declared as between the partnerships themselves.

Mr. *Cracknall*:—Except in the case of Mr. *Cocks's* trustees, the question is really determined by *Fleming's Case*.

LORD CAIRNS:—It does not seem to have been argued there, whether the contract to indemnify was limited or unlimited. It is possible, if it had been argued, the Court might not have agreed with the view I took in the *Indemnity Case*. The Lord Justice *James* is reported, in *Fleming's Case*, to have said:

The creditor of a joint stock company becomes a member of a new partnership, which takes all the assets of the old partnership or company.

That, perhaps, is hardly accurate, because they merely took the

assets in hand. They did not take the unpaid capital. The judgment goes on :

with an undertaking, express or implied, to discharge all the debts of that company, including his.

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If that was a common law covenant, an unlimited covenant by the company binding on the shareholders *in solido*, to the utmost of their means, I should have thought it would be a clear case.

Mr. *Cracknall* :—If *Fleming's Case* is right, it is plain that the effect of the transaction is, that no person who became an *Albert* shareholder could claim against the *Western* in respect of the liability against which he, as an *Albert* shareholder, was bound more or less to indemnify the *Western*.

LORD CAIRNS :—It would be a strange result if, because a man virtually covenants as to ten pounds a share on three shares, he is to be taken to have annihilated a right to have a thousand pounds paid to him.

Mr. *Cracknall* :—Partners, who are themselves creditors of the concern, cannot resort to the assets till all other creditors are paid. As regards the sale by Mr. *Frere* of his shares, if *Fleming's Case* is right, that would not affect the question ; the right to claim would not revive on the sale.

A reply was not called for.

LORD CAIRNS :—With regard to the case of Mr. *Cocks's* trustees there seems to be no doubt. I am bound to look at the trustees as persons who in reality are the owners of the policy, and as against them there is no case at all to allege why they should not be paid the sum due to them on the policy.

With regard to the other two cases, I feel myself certainly placed in a position of difficulty, by reason of the decision in *Fleming's Case*. That seems to have proceeded on the principle, that, by virtue of a covenant to indemnify, a creditor of the old partnership, who became a shareholder in the new partnership, that is, the

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amalgamated company, had really contracted to pay out and out all the debts of the old partnership including his own. If that were so, there would be an end to, and an extinguishment of, his own debt, that is, he never could claim payment of his own debt. But I am unable to hold that that is the true position of the case, consistently with the decision I have already given on the subject of these covenants to indemnify. I have decided that these covenants to indemnify are not covenants unlimited in their scope, but that they do nothing more than bind and affect the paid and unpaid capital of the indemnifying company. Therefore, a shareholder in the indemnifying company is not a person who has covenanted to indemnify, without limit of liability, in respect of the debts of the old company; he is a person who has done nothing more than this: he has agreed that the paid and unpaid capital of his own company, including the unpaid portion of his own share capital, shall be available to indemnify the old company in respect of the old debts. That seems to me not to be a merger or an extinguishment of his own claim against the old company, supposing that otherwise his debt against the old company would subsist. It is only a dedication, as it were, of his own portion of the capital which must be paid up, to indemnify the old company. It is not an extinguishment of the debt.

I therefore must hold that the right of Mr. *Frere* and Mr. *Shayler* to claim against the *Western* still exists.

There will be the obligation against Mr. *Shayler*, who still holds his shares in the *Albert*, to pay up the whole of his shares in full. Mr. *Frere* parted with his shares before the winding-up.

The costs must be paid in the liquidation of the *Western*.

Solicitors for Mr. *Frere*: Messrs. *Frere, Cholmeley, & Co.*

Solicitors for Mr. *Shayler*: Messrs. *Evans & Co.*

Solicitors for Mr. *Cocks's* Trustees: Messrs. *Still & Son.*

Solicitor for *Western*: Mr. *Manning.*

CLARKE'S CASE.

Policy—Novation—Protest—Bonus.

1872

May 1.

Novation consequent on amalgamation not established against a policy-holder, in the following circumstances: He had paid his premiums to the transferee company; the amalgamation agreement, however, provided in effect that such of the policy-holders of his assuring company, the transferors, as declined to accept substituted policies of the transferee company, should be entitled to keep on foot their policies by paying their premiums to the transferee company; when applied to by the agent of the transferee company, to accept a substituted policy, he refused; and on being informed by the agent that a bonus had been declared on his policy, and that there were papers for him, he refused to take them.

THIS was an application to the Arbitrator for a decision on the claim of Mr. *John Clarke*, of *Newport*, to prove against the *Medical* on two policies dated in 1853, issued by the *Medical* to him, on his own life, for an aggregate sum of £599 19s., with profits.

Mr. *Clarke* had made two affidavits. One, after describing his two policies in the *Medical*, proceeded as follows:

2. I paid the yearly premiums on the two said policies to the *Medical*, up to and inclusive of the premiums falling due in the year 1860.

3. In or about the year 1860, the business of the *Medical* was transferred to the *Albert*.

4. Previous to such transfer being so made, I was not as such policy-holder in any way consulted as to such transfer, nor did I in any way consent nor assent to such transfer.

5. After such transfer, I was called upon by *Samuel Cooper Grimes*, of this town, who was formerly agent in this district for the *Medical* and afterwards for the *Albert*, and solicited by him to have my said two policies in the *Medical* exchanged for two like policies in the *Albert*, or to have my two old policies in the *Medical* indorsed with a memorandum discharging the *Medical* from all liability with respect to the said policies, but by which memorandum the *Albert* would have acknowledged a liability on their part with respect to the said two policies; but I at that time expressly and distinctly stated to the said *S. C. Grimes*, as such agent of both of the said companies, that I would not exchange my said two policies in the *Medical* for two policies in the *Albert*, and, further, that I would not submit to have any indorsements made on my said two policies discharging the *Medical* from all liability thereunder, and at the same time expressing to the said *S. C. Grimes*, as such agent as aforesaid, that I was perfectly satisfied with the security of the *Medical*, and that I should hold the *Medical* liable thereon.

6. Since the said transfer, I have continued to pay the premiums upon my two

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said policies in the *Medical*, until orders were made for the winding up of the said two companies, to the *Albert*, as agents for the *Medical*, but without in any way recognising the *Albert* as liable to me on my said policies, and I am advised and believe that I have not, nor never had, any legal claim with respect to my two said policies against the *Albert*, nor against any company or society other than the *Medical*.

7. I did not at the time of the said transfer, nor have I at any time since, in any way whatever, sanctioned the said transfer of my said two policies from the *Medical* to the *Albert*, nor have I knowingly done or committed any act, matter, or thing, whereby or by reason or means whereof I have released the *Medical* from their liability to me with respect to the said policies.

The other affidavit related to what passed on the declaration of the *Albert* bonus in 1863.

An affidavit was also filed on behalf of Mr. *Clarke*, made by Mr. *S. C. Grimes*, who said :

1. Before and during part of the year 1860, I was agent at *Newport* for the *Medical*, and was agent in *Newport* for the *Albert* after the transfer of the business of the *Medical* to the *Albert*.

2. I was in the habit of collecting the premiums due from the many policy-holders in *Newport*, and amongst other premiums from *John Clarke* of *Newport*, corn merchant, with respect to two policies in the *Medical*. . . .

[The rest of the affidavit is stated in the judgment.]

The receipts were in the usual forms.

Mr. *Higgins*, Q.C., was for Mr. *Clarke*.

Mr. *Lemon* was for the *Medical*.

Mr. *Higgins* contended that in the circumstances there was no novation.

Mr. *Lemon* :—The communications with the agent appear to have been immediately after the notice of the amalgamation. The protest, therefore, was not a continuing protest, but merely one made at the time. In the affidavit relating to the bonus, Mr. *Clarke* has not fully explained. He does not say he declared he would not have anything to do with the bonus. He only says he declared he would have nothing to do with the *Albert*. But he had already been paying his premiums to Mr. *Grimes* as agent not for the *Medical*, but for the *Albert*. He does not say he

would not accept the bonus. It is to the papers he refers, and he does not say that he did not accept, only that he told the agent he would not accept. This is in 1863; yet after this he goes on paying his premiums to the *Albert*. The bonus circular was explained to him, and he knew that it offered him the bonus not from the funds of the *Medical*, but from the funds of the *Albert*. He knew that if he allowed the time to elapse the *Albert* would add to the sum assured the reversionary bonus, and that they would consider no answer to be in fact an acceptance of the bonus.

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A reply was not called for.

LORD CAIRNS:—I will take the undisputed facts first. By undisputed facts I mean those facts which do not rest on the testimony of Mr. *Clarke*, who had been called up for cross-examination, and whose cross-examination cannot be taken, in consequence of circumstances for which neither he nor any other person is responsible, but who may be supposed to have given testimony which is open to more or less criticism.

The undisputed facts are these. On the amalgamation of the *Medical* with the *Albert* it was provided that the policy-holders in the *Medical* should be invited to substitute for their subsisting policies other policies to be issued by the *Albert*. The local agent at *Newport* of the *Medical* was Mr. *Grimes*. Mr. *Grimes* has made an affidavit; it has not been proposed to cross-examine him—I have no doubt a very proper resolution on the part of those who conduct the case of the *Medical*. I only observe on it as shewing that I must take Mr. *Grimes's* evidence as evidence not in any way impeached. What he says is this:

3. After the transfer of business from the *Medical* to the *Albert* I was instructed by the secretary of the *Albert* to call upon the holders of policies in the *Medical*, who resided in *Newport*, and to solicit and to endeavour to persuade them to accept new policies in the *Albert* in lieu of their policies in the *Medical*, or to have a memorandum indorsed on their policies, transferring the liability of the *Medical* on the policies to the *Albert*.

That was just what one might have expected, and was in accord.

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ance with the deed of amalgamation, and the instructions which were given to Mr. *Grimes* were the instructions which one would have anticipated from the contents of that deed. Then, Mr. *Grimes* continues :

4. I distinctly recollect calling on the policy-holders, and, amongst others, on *John Clarke*, and, in accordance with instructions as aforesaid, endeavouring to persuade him to consent to accept such new policies in the *Albert* in lieu of his two policies in the *Medical*, or to have the memorandum referred to in the 3rd paragraph of this my affidavit indorsed on them, which would have thereby discharged the liability of the *Medical*.

5. *John Clarke* refused to have or accept such new policies in the *Albert* in lieu of his two policies in the *Medical*, or to have the memorandum indorsed thereon, asserting that he was perfectly content with the security of the *Medical*, and that he declined and refused to relieve the *Medical* from its liability on his two policies.

6. I thereupon informed the secretary of the *Albert* that *John Clarke* had so refused to accept the liability of the *Albert* in lieu of the liability of the *Medical*.

So far as Mr. *Grimes* is concerned, therefore, his evidence is unequivocal and complete. He applied to Mr. *Clarke* to induce him to substitute the liability of the *Albert*. Mr. *Clarke* refused to consent to the substitution of the liability of the *Albert*. He, Mr. *Grimes*, informed the secretary of the *Albert* that Mr. *Clarke* had so refused. The secretary of the *Albert* is not called to impeach this statement; and the information having been by letter, there is no evidence that there was not a letter, and there is no letter produced which on the face of it would bear a different interpretation from what Mr. *Grimes* puts on the letter which he sent. I am bound, therefore, to take it as uncontradicted and unchallenged evidence in the case.

That being so, what the deed of amalgamation says is, that the policy-holders in the *Medical* who decline to accept substituted policies shall be entitled to keep on foot their *Medical* policies by paying the premiums to the *Albert*, which shall undertake the liabilities of the *Medical* (that is, as between themselves and the *Medical*) in respect of those policies.

The state of things, therefore, which we get to at this point is this: the amalgamation; a stipulation that the policy-holders should be asked to substitute liability; a request made to Mr. *Clarke* to substitute liability; a refusal by Mr. *Clarke* to consent to the substitution; a provision in the deed of amalgamation that

if any one so refuses he might pay his premium to the *Albert*, but that the effect of that would be to keep alive his right against the *Medical*. Nothing can be more complete than that chain.

That brought about a state of things which might afterwards have been altered; but the *onus* is on the *Medical* to shew that it was afterwards altered, and that a new *status* was arrived at. The official liquidator endeavoured in Chancery to do that, and that is the only way in which it seems to me the question about the bonus is material. There was a bonus declared on all profit policies, and amongst the rest on these policies, by the *Albert*. A circular was sent to all the policy-holders to tell them of it. There is a column in the *Albert* books to shew the case in which the bonus was specially dealt with by cash payment or by reduction of premiums, and where not so specially dealt with, according to the circular, it would be added to the reversionary amount of the policy. If it could be brought home to Mr. *Clarke* that he had assented to that bonus, and received it, or agreed or allowed it to be added to his policy without observation, the case might have been brought nearer some of those that have been decided.

Here it is that Mr. *Clarke's* evidence may fairly be referred to. It appears from the course of business, that the bonus circular would be sent, and it was sent, to Mr. *Grimes* as the local agent, to be handed to the different policy-holders at *Newport*. Now, what Mr. *Clarke* says in his affidavit is this:

I remember that in the year 1863 I was informed by Mr. *Samuel Cooper Grimes*, who had formerly acted as agent for the *Medical*, and who was at that time acting as agent for the *Albert*, that a bonus had been declared upon my two policies by the *Albert*, and that he had some papers with respect to such bonus for me at his office; and that I then told him as such agent that he need not trouble himself about any such papers, as I had nothing to do with the *Albert*, and that I would not accept any such papers from the *Albert*, as I did not recognise them in any way; and, as I had told him before, I then again informed him that I was not satisfied with the transfer of my policies from the *Medical* to the *Albert*, and that I had not recognised such transfer, and that I still held and would continue to hold the *Medical* liable upon the policies.

The *onus*, then, having been thrown on the *Medical* to shew that the *status* that was brought about on the former meeting of Mr. *Grimes* and Mr. *Clarke* was changed, the only way that they do that being by shewing that a bonus circular was sent for Mr. *Clarke*,

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I am obliged to take Mr. *Clarke's* statement of what passed on the occasion of his hearing of that bonus circular. It seems to me that he has prevented that counter-case having any effect as against him. He has by evidence, which here I must give weight to, shewn that when he was informed of the bonus circular, he said the paper need not be given to him, that he could not recognise the *Albert*, and that he continued to hold to the *Medical*.

Therefore, I am of opinion he is entitled to say he is one of those persons who have declined to accept a substituted policy, and that he has kept on foot his original policy as against the *Medical*, by the payment of premiums to the *Albert* according to the terms of the amalgamation deed.

The reversionary bonus which was added by the *Albert* and which has been included in the valuation of the policy must be taken off.

Mr. *Higgins*:—The order will be without prejudice to any claim Mr. *Clarke* may be advised to make. He may have a right to bring in a separate claim for damages, or a claim on some other ground, as against the *Medical*, for having given him a worse policy than he was entitled to. They contracted to give him a bonus, and have not done so; they contracted to last for a thousand years and to carry on business. He ought to be entitled to claim in respect of any loss he has suffered.

LORD CAIRNS:—I will say nothing about it. He will do as he may be advised.

Solicitors for Mr. *Clarke*: Messrs. *Johnson & Weatherall*.

Solicitors for *Medical*: Messrs. *Walker, Kendall & Walker*.

CLARKE'S EXECUTOR'S CASE.

1872

Feb. 3.

List of Contributories—Liability of Past Shareholders.

A shareholder in the *Albert* died in 1867; his executors transferred his shares in accordance with the *Albert* deed of settlement; in 1869 the *Albert* went into liquidation; there were then existing unpaid debts of the *Albert*, both on specialty and on simple contract, which had been due at the time of the transfer by the executors, and which the shareholders on the register at the commencement of the liquidation were unable to pay; these debts were of three classes, namely, (a) debts on policies and annuity contracts contracted subject to the provisions of the *Albert* deed; (b) debts in respect of indemnities given by the *Albert* on taking over the businesses of other companies; (c) general debts; one of the executors was dead; *Held*—

(1) As regards the first two classes of debts, in respect of both of which the liability of shareholders was limited to their shares in the capital, there was no ground for putting the surviving executor on the list of contributories:

(2) As regards the third class of debts, if the estate of the outgoing shareholder continued liable for such of the debts of this class as had accrued before the transfer of the shares, yet the liability would be that of a surety only, and the incoming shareholder, as principal, would be bound, without limit of liability, to make good anything that the surety would have to pay; it would therefore be useless to put the executor on the list in respect of the suretyship; moreover, it appeared that there was no appreciable amount of debt of this class remaining to be paid in the liquidation; therefore, the executor should not be put on the list:

(3) As regards the costs of the liquidation, the executor, not being put on the list in respect of some debt, could not be put on for contribution to the costs:

Consequently, on the whole matter, the executor was not put on the list.

THIS was an application, on a Case stated by agreement, for the decision of the Arbitrator on the liability of past shareholders in the *Albert*.

On the amalgamation of the *Bank of London* with the *Albert* in 1858, Mr. *George Clarke*, in writing, requested the directors of the *Albert* to allot to him 340 shares in the *Albert*, and undertook to accept the same, and to execute the deed of settlement, of the *Albert*, when required. In pursuance of his request, 340 shares were allotted to him; and his name was entered on the register of

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members of the *Albert* in respect thereof. He never, in fact, executed the *Albert* deed, but he acted as a member of the *Albert*, in respect of those shares, and received the dividends thereon until his death in November, 1865. His will was proved by Mr. *R. C. Clarke* and Mr. *John Worley*, the executors therein named. On 24 September, 1867, the executors transferred 40 of the testator's shares to Mr. *J. N. Lawton* by deed, executed by all parties, the substance whereof was as follows :

We, *R. C. Clarke* and *J. Worley*, executors of *G. Clarke*, in consideration of £15 paid to us by *J. N. Lawton*, do hereby bargain, sell, assign, and transfer to *J. N. Lawton* 40 shares, numbered 12,293 to 12,332 of the undertaking called the *Albert Company*, to hold unto him his executors, administrators, and assigns, subject to the several conditions on which we held the same immediately before the execution hereof ; and I, the said *J. N. Lawton*, do hereby agree to accept and take the said shares, subject to the conditions aforesaid.

On 27 September, 1867, the executors transferred the remaining 300 shares to Mr. *J. Pargeter*, by deed executed by all parties, the substance whereof was as follows :

Know all men by these presents that *R. C. Clarke* and *J. Worley*, executors of *G. Clarke*, in consideration of £75 to them paid by *J. Pargeter* (who hath been approved of by a board of directors of the *Albert Company* as a fit and proper person to be admitted into the company in the room of *R. C. Clarke* and *J. Worley*) hereby assign unto *J. Pargeter* all those three hundred shares of them numbered 11,993 to 12,292 in the capital stock or funds of the company, and also all dividends, interest, and proceeds thereof now due, or which hereafter shall become due, in respect thereof, to hold the same unto the said *J. Pargeter*, his executors, administrators, and assigns, subject to the same rules and regulations, and on the same conditions as *R. C. Clarke* and *J. Worley* held the same immediately before the execution hereof ; and *J. Pargeter*, for himself, his heirs, executors, and administrators, doth hereby covenant with *W. B.*, and *J. N.*, and *W. P. T. P.* (three directors on behalf of the company), their executors and administrators, that he, his executors and administrators, shall and will at all times hereafter observe, keep, and perform the several covenants, clauses, provisions, stipulations, and agreements contained in the deed of settlement of the company, and any deed which may have subsequently been, or which may hereafter be made and entered into . . . [with covenants by *R. C. Clarke* and *J. Worley* for right to assign, and for further assurance].

Mr. *Lawton* and Mr. *Pargeter*, the transferees, were approved by the directors and registered as proprietors of the *Albert*, in respect of 40 shares and 300 shares respectively, and they received

dividends, but Mr. *Lawton* did not execute any deed of covenant with the company, nor did Mr. *Pargeter* execute any such deed other than the deed of transfer of 27 September, 1867. The course adopted in respect of transfers of shares in the *Albert* was this: the transferor, with the executed transfer deed, handed over to the transferee the certificates for the shares transferred; the transferee then lodged with the company the certificates and transfer deed; and, on the deed being registered, the company issued new certificates for the same shares to the transferee, and retained the old certificates. This course was followed on the occasion of each of the transfers to Mr. *Lawton* and Mr. *Pargeter*.

In 1868 Mr. *R. C. Clarke* died.

For the purposes of the Case it was admitted that the existing members of the *Albert* were unable to pay the debts of the *Albert*, and further, that there were debts of the *Albert* still unpaid, which consisted of—

- (1.) Debts due in respect of policies and annuity contracts of the *Albert*, contracted and entered into on the expressed terms of their being subject to the provisions of the deed of settlement.
- (2.) Debts and liabilities since matured into claims, in respect of contracts for guarantees and indemnities on assuming and taking over the businesses of other companies.
- (3.) General debts.

It was also admitted that debts and liabilities of each of these classes, both on specialty and on simple contract, due at the respective dates of the said transfers were still unpaid.

The questions stated in the Case were:

- (1.) Whether Mr. *Worley*, as surviving executor of Mr. *G. Clarke*, was liable to be settled on the list of contributories of the *Albert* for the 340 shares, or any and which of them.
- (2.) And if so, to what extent, and in respect of what debts or liabilities, calls ought to be made upon him as such contributory; and whether he was liable to contribute to the costs of the winding-up.

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Mr. *H. M. Jackson* was for the *Albert*.

Mr. *R. Horton Smith* was for Mr. *Worley*.

Mr. *Jackson* :—The point is, whether past members of the *Albert* can be fixed as contributories, that is to say, whether the terms of the deed entitling them to retire exonerate them from liability to calls to pay debts incurred while they were members ; and then, as a supplemental question, whether they are liable to contribute to the costs of the winding-up. The question arises on sect. 200 of *The Companies Act*, 1862, and clauses 210 and 211 of the *Albert* deed. It depends on the ordinary legal principle applicable to a partnership, not incorporated, merely working under the provisions of a deed. *Primâ facie* every partner would be liable for all debts, within the scope of the partnership business, contracted during the time he was a member of the partnership, subject to his liability being determined by the effect of statutes of limitations, or payment, or release. As regards outside and general debts, a creditor, not contracting with the company in such a way as, either expressly or by implication, to shew that he contracted on the terms of the company's deed, would be entitled, in due course of administration, to have his debt paid by any person whom he could find liable to him for it. Therefore, if there is a debt now payable which was an obligation of the company at the time when Mr. *Clarke* ceased to be a member of the company, his estate would, as to that creditor, be liable, having or not having a right of indemnity over against the other members, or against the general estate of the company. The amount so involved would not, however, be material, and the question would not be worth raising except for the purpose of determining the subsidiary question, whether the shareholder in this position is not also liable to the costs of the winding-up. As regards the bulk of the *Albert* liabilities incurred under special contracts for annuities, or on policies, or on indemnities given on amalgamations, there is no unlimited liability subsisting, so as to bind even present members. Therefore, past members would stand in the same position as present members, in respect of liabilities so incurred. Clause 210 of the *Albert* deed relates only to members,

as among themselves; that is to say, it does no more than give transferring members something in the nature of a right to indemnity, or a right to have the continuing members exhausted first. A creditor may say, although he is bound by all the terms of the deed, that does not, as against him, release a transferring member who has once contracted to contribute to the funds. The words would be satisfied by holding, that from the time he ceased to be a member nothing to be done should in any way affect him. Otherwise clause 211 would be unnecessary. The release and acquittance given by clause 210 is to be from all further liabilities and obligations in respect of the shares.

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LORD CAIRNS :—He is to be acquitted and discharged from two things; first, from all liabilities and obligations in respect of the shares; that points to the time at which the transfer is made; and secondly, from all further claims and demands on account of the same. He is not acquitted and discharged if he has to pay money afterwards. Suppose the deed had said: he is discharged from all existing and future claims. Then clause 211 provides that he is not to claim any profits. By clause 210 he is to lose the liabilities; by clause 211 he is to lose the advantages. Then, with regard to the third class, called outside creditors, retiring shareholders would, from the scheme of the deed, be, with respect to them, in the position of sureties only, not of principals. There would be no limited liability. Then, even if you had the sureties on the list, and got them to pay those debts, the continuing shareholders would be bound to indemnify the outgoing shareholders, without limit of liability; and there may be continuing shareholders now able to pay in full debts of that kind.

Mr. Jackson :—The liquidators would be bound, in the first instance, to get in any of the assets they could, from whatever source.

LORD CAIRNS :—That is not the *modus operandi*. First, the whole of the capital of the *Albert* is called up, and as much as can be is got from it. Then, if there are outside creditors who are not bound by limit of liability, it is necessary to go on and make an unlimited call on any one who can pay it, to satisfy those

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debts. Then, if a retiring shareholder is put on the list in respect of those debts too, it would be only as a surety, and he would have to be recouped by the other set of shareholders. Therefore, if it is reduced to a question of the third class of creditors, it is an idle thing. It is admitted the amount is very small; so there would be all the cumbrous process of putting both the surety and the principal on the list, although the liquidators would be bound to make the principal pay.

Mr. Jackson:—For the purpose of argument, I have not disputed that the relation is that of principal and surety, but, under the *Companies Act*, it is settled that, as to past members, there is not that relation in any way.

LORD CAIRNS:—That is from the technicality of the wording of the Act. But in an ordinary partnership, with a covenant to indemnify, the outgoing partner is surety and the continuing partners are principals. There was a case a good many years ago in the House of Lords,

Oakeley v. Pasheller, 4 C. & F. 207,
in which that was much considered.

Mr. Jackson:—Then it comes to the question of the liability to contribute to the costs of the winding-up. If the surviving executor is liable to contribute any sum, however small, to the payment of the debts and liabilities of the company contracted before his testator ceased to be a member, it follows that he is a contributory, and it follows further that he is liable to contribute to the costs of the winding-up.

LORD CAIRNS:—Section 200 of the Act of 1862 does not say on what principle a contributory is to be liable. Then, does not this liability stand or fall with the other? If, for the reasons I have suggested, I cannot put a retiring shareholder on the list, how could I put him on merely to contribute to costs? Whom would he be contributing to? To the incoming and continuing shareholders, who, by the hypothesis, are bound to keep him harmless. As far as the liquidators represent creditors, they have nothing to say to the costs of winding up.

Mr. *Horton Smith* was not called on.

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LORD CAIRNS:—It seems to me clear that this gentleman cannot be put on the list as a contributory in respect of the first or of the second class of debt, that is to say, debts on policies where under the deed the liability is limited, and where under the deed the outgoing shareholder on transfer and registration ceases to be liable on the shares. It seems to me that on the construction of the deed, and especially clause 210, the engagement between the outgoing and the incoming shareholder is this, that the liability of the outgoing shareholder shall determine, both as to debts then present and as to debts afterwards to be incurred, and that the whole liability shall be the liability of the new shareholder in respect of the shares. In this case it seems to me further that in substance everything was done, as between the outgoing and the incoming shareholder, to which clause 210 can apply. Therefore, I repeat, that, as regards the first two classes of debts, my opinion is that there is no ground at all for putting the retiring shareholder on the list.

A question might arise as to the third class of debts, the liability in point of amount being unlimited and not confined to the capital, whether, in respect of so much of that class of debts as had accrued before the transfer, the outgoing shareholder would not continue to be liable. But if he were liable (as I have said in the course of Mr. *Jackson's* argument) the liability would be that of a surety, and the other shareholder in the company who had come into and was in possession of the shares of the outgoing shareholder would be the principal debtor, and would be bound without limit of liability to make good anything that the surety would have to pay. That alone would raise a great difficulty as to my sanctioning so useless an operation as putting him on the list in respect of his suretyship. Then there is a further difficulty, if he is only to be put on the list in respect of those debts. Before putting him on, I should require the liquidators to shew me what the debts of this class were which had accrued before the transfer, in order to see whether there was any considerable amount in

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respect of which the transferring shareholder could be put on the list. But the liquidators inform me, in answer to my question, that it would be found that there is no appreciable amount of debts of that class at this time.

Then can I put the retiring shareholder on the list in respect of the costs of the winding-up? It seems to me certainly not; because, in order to create a liability for the costs of the winding-up, there must be good reason for putting the retiring shareholder on the list, in order that he may make some payment in respect of debt. It is only because he is found on the list as a person liable to pay some of the debts, that a jurisdiction to make him contribute to the costs would arise.

For these reasons, I am of opinion that I am not able to put the retiring shareholder, or, in this case, the executor of the retiring shareholder, on the list of contributories.

Solicitors for *Albert*: Messrs. *Lewis, Munns, & Longden*.
Solicitor for Mr. *Worley*: Mr. *Sturt*.

SOVEREIGN LIFE ASSURANCE COMPANY'S CASE.

BOWRING'S CASE.

1871

June 5;
July 6.*Amalgamation—Exchange of Policy—Satisfaction of Claim.*

IN these cases the policy-holders had, on the amalgamation of the *Medical* with the *Albert*, accepted *Albert* policies in exchange for *Medical* policies.

LORD CAIRNS held it to be clear (1) that the policy-holders had no claim on the original *Medical* policies against the *Medical* assets generally; (2) that they had no claim against the *Medical* trust fund, which was held on trust to pay and satisfy such claims on policies issued by the *Medical* as the *Albert* should not pay or satisfy, inasmuch as the *Albert* had satisfied the claims on these *Medical* policies by the issue of *Albert* policies in exchange.

Mr. *Locock Webb* was for the *Sovereign*; Mr. *Galland* (Solicitor) for Sir John *Bowring*; Mr. *Lemon* for the *Medical*.

Solicitors for *Sovereign*: Messrs. *Davies, Campbell, & Reeves*.

Solicitor for Sir John *Bowring*: Mr. *Galland*.

Solicitors for *Medical*: Messrs. *Walker, Kendall & Walker*.

1872

May 1.

POWER'S CASE.

Policy—Novation.

Novation consequent on amalgamation not established against a policy-holder, in the following circumstances : The policy-holder, being entitled to a rent-charge on land payable by a receiver in the Court of Chancery, had mortgaged the rent-charge and policy to the insuring company (the transferors); an order of the Court had been thereupon made by consent, directing the receiver, out of the rent-charge, to pay the premiums and interest to the agents of the insuring company ; on the amalgamation, the mortgage debt was assigned to trustees as part of a fund created to meet claims on the transferor company ; after the amalgamation, by direction of the trustees of the fund, and without any fresh order of the Court, the premiums were remitted to the transferee company ; the policy-holder knew nothing of the amalgamation.

THIS was an application for the decision of the Arbitrator on the claim of Mrs. *Maria Power* to prove against the *Medical* on two policies, one for £1600, the other for £400, effected by her with the *Medical*, dated 14 August, 1857.

On 15 July, 1859, an order was made, in a minor matter, in the Court of Chancery in *Ireland*, directing the receiver who had been appointed in that matter by the Court over lands in the county of *Kilkenny*, charged with a rent-charge of £400 a year in favour of Mrs. *Power*, to pay to her the rent-charge. In July, 1860, she borrowed from the *Medical* £1200. By a deed of 21 July, 1860, she assigned the rent-charge and policies to the trustees of the *Medical* to secure the loan. By an order of 22 August, 1860, in the same matter, on the petition of Mr. *C. Hopkinson* and others as trustees of the *Medical*, the Court ordered that a consent of 21 July, 1860, therein mentioned, signed by Mrs. *Power*, should be made a rule of Court, and that the receiver should, during her life, or until further order, out of the rent-charge, pay half-yearly to Messrs. *Lewis & Howe*, the *Dublin* agents of the *Medical*, the several sums therein mentioned, in pursuance of the consent. These sums were the premiums on the policies and the interest on the loan.

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In 1860 the *Medical* was amalgamated with the *Albert*, and by deed of 14 March, 1861, the life assurance fund of the *Medical*, which included Mrs. *Power's* mortgage debt, was assigned to trustees. Down to 1862 the receiver made the payments as directed by the order; afterwards the premiums were paid to the *Albert*, but no fresh order was obtained from the Court authorizing the receiver to make payments otherwise than to the *Medical*. The renewal notices for the policies were sent to the receiver or his solicitor or agent in *Dublin*; the receipts for the premiums and for the interest due to the trustees were also so sent.

Mrs. *Power* alleged that she had not accepted, and that no application was ever made by the *Medical* to her to accept, the liability of the *Albert* in lieu of that of the *Medical*, and that the fact of the amalgamation was not known to her until March, 1871. She submitted that the receiver was the officer of the Court, and was not her agent, or authorized on her behalf to enter into any new contract with the *Albert* or to release the *Medical*.

Mr. *Shapter*, Q.C., (Mr. *Rawlinson* with him) was for Mrs. *Power*.

Mr. *Lemon* was for the *Medical*.

A reply was not called for.

LORD CAIRNS:—I must say this is an unusually clear case. I do not think there is a fragment of evidence to justify me in holding that this lady has lost her right against the *Medical*, and has taken in substitution the liability of the *Albert*.

The policies were policies in the *Medical*; they were mortgaged to the trustees of the *Medical*. I do not stop to inquire what, if there had been nothing more done, would have been the rights of those trustees with regard to surrendering the policies, letting them drop, and taking out policies in another company. But what was done with reference to them was this: the lady had a

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jointure rent-charge of £400 a year payable to her by a receiver under an order of the Court of Chancery in *Dublin*. That jointure was part of the security of the *Medical*; and out of it were to be paid, under the mortgage, the interest on the money borrowed from the *Medical*, and the premiums on the policies. A consent order was made on the application of the trustees of the *Medical* by the Court, the parties to which were Mrs. *Power* on the one side, and the trustees of the *Medical* on the other. That consent order provided that the receiver should pay not only the interest on the money borrowed, but also the premiums on the two policies; that he should pay those premiums to the *Dublin* agents of the *Medical*. From that time the receiver became (as it were) the agent of the *Medical*, and was bound to make the payment of the premiums to that company's *Dublin* agents; and, if he had failed at any time to make those payments, the *Medical* would have had a right to step in and insist, if he had funds, on his making the payment. Then came the amalgamation of the *Medical* with the *Albert*. Mrs. *Power* knew nothing about it. By the terms of the amalgamation her mortgage security became part of the *Medical* trust fund. I will assume that the *Albert*, as between themselves and the *Medical*, became charged with the liability on the policies. But until Mrs. *Power* did something, she was a person who had made an arrangement by which the *Medical* was to continue to be paid the premiums on the policies. From that time the receiver must have done one of two things; either he must have paid the wrong person under the order, that is, paid a person who was not authorized to receive under the order, which is not suggested; or he must have paid the trustees of the *Medical* fund, or the *Albert* by order of the trustees of the *Medical* fund. And that no doubt is the true explanation. The trustees of the *Medical* fund directed their *Dublin* agents to remit the money received from the receiver to the *Albert*, in consequence of the arrangement between the *Medical* and the *Albert*. The result of that is that the only persons who have paid premiums to the *Albert* are the trustees of the *Medical* fund. That cannot affect Mrs. *Power*. It may have been a fit thing to be done in consequence of the arrangement between the *Albert* and the *Medical*; but, at all

events, a payment of the premiums has from time to time been regularly made by Mrs. *Power*, through the medium of the receiver. into the hands of the agents of the trustees of the *Medical* fund, and the policies have been duly kept up. I do not see the least ground for saying that there is any infirmity in the claim of Mrs. *Power* against the *Medical*. She must have the costs of her application.

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Solicitors for Mrs. *Power*: Messrs. *Bannister & Fache*.

Solicitors for *Medical*: Messrs. *Walker, Kendall, & Walker*.

1872

June 12.

DUPRÉ'S EXECUTOR'S CASE.

Endowment Contract—Novation.

Novation consequent on amalgamation not established, in the circumstances, against the executor of an endowment-contract holder, a premium (the last) falling due after the amalgamation having been paid to the transferee company by the bankers of the contract-holder's widow, but without the executor's authority.

THIS was an application, on a Case stated by agreement, for the decision of the Arbitrator on the claim of Mr. *Thomas Baring*, as surviving executor of the Rev. *W. M. Dupré*, to prove against the *Family Endowment* on an endowment contract.

The contract, dated 9 July, 1840, declared that, in consideration of £15 5s. 8d. paid by Mr. *Dupré*, and in case he, his executors, administrators, or assigns, should, on 1 July in every year until and including 1861, pay to the directors of the *Family Endowment* £15 5s. 8d., the funds of the *Family Endowment* should be liable, according to the provisions of the deed of settlement of the *Family Endowment*, to the payment of £200 (with bonus) for every child of Mr. *Dupré* and *Emily Dupré* his wife thereafter born who should attain twenty-one.

Mr. *Dupré* died 16 October, 1855, leaving his said wife surviving, and having appointed three executors, of whom Mr. *Thomas Baring* was the survivor.

Early in 1861 the *Family Endowment* was amalgamated with the *Albert*, and in March, 1861, a circular was sent from the *Family Endowment* to contract-holders notifying the amalgamation and inclosing a prospectus of the *Albert Medical and Family Endowment*, but Mrs. *Dupré* alleged that it did not reach her.

Mr. *Dupré*, and, after his decease, his executors, or his widow on their behalf, duly paid to the *Family Endowment* the premiums on the contract, up to and inclusive of the premium which became payable in July, 1860. For this premium the *Family Endowment* gave a receipt in a printed form as follows:

A. No. 1908.

THE FAMILY ENDOWMENT LIFE ASSURANCE AND ANNUITY SOCIETY,
12, Chatham Place, Blackfriars, London, E.C.

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Received the sum of Fifteen pounds five shillings and eight pence, being the yearly premium from the first day of July, 1860, for an assurance of £200 under Policy No. 505, issued on the lives of children of the Rev. *W. M. Dupré*.

(Signed by two directors.)

£15 5s. 8d.

Afterwards, in August, 1860, Mrs. *Dupré* directed her bankers, Messrs. *Williams, Deacon, & Co.*, to pay the premium annually. The last of the premiums on the contract became payable on 1 July, 1861, and was in that month paid by Messrs. *Williams, Deacon, & Co.* at the office of the *Albert and Family Endowment*, and a receipt for it was given in their altered printed form as follows :

No. A. 4370.

2nd day of July, 1861.

THE ALBERT MEDICAL AND FAMILY ENDOWMENT LIFE ASSURANCE COMPANY,
Chief Office, 7, Waterloo Place, Pall Mall, London, S.W.

Received the sum of Fifteen pounds five shillings and eight pence, being the yearly premium, from the 1st day of July, 1861, for an assurance of £200 under Policy No. 505, issued on the lives of children of the Rev. *W. M. Dupré*.

(Signed by two directors.)

£15 5s. 8d.

Mr. *Baring* claimed to prove against the *Family Endowment* on the contract in respect of two sums which had become payable thereunder on the coming of age of the two younger children of the marriage.

An affidavit was filed on behalf of the liquidators of the *Family Endowment* made by Mr. *Galsworthy*, who had been actuary of the *Family Endowment*, for some time before the amalgamation, and who, after the amalgamation, was in the office of the *Albert*. It contained the following statement :

On or about 19 March, 1861, a printed notice was sent out from the *Albert* office (in the form produced) to all the contract or endowment policy-holders of the *Family Endowment* whose names and addresses at that time were set forth in the renewal premium register of the *Family Endowment* to the addresses then appearing in such register, informing them of the amalgamation, accompanied by a printed prospectus of the *Albert* (in the form produced), inclosed in an envelope (in the form produced); and from an inspection of the said renewal premium:

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register I have no doubt whatever that the aforesaid notice, prospectus, and envelope were, on or about 19 March, 1861, sent to Mrs. Dupré, through the post-office, addressed to her at 1, *Chesham Place, Perceval Terrace, East Cliff, Brighton.*

Mr. *Maynard* (solicitor) was for the claimant.

Mr. *Rodwell* was for the *Family Endowment*.

Mr. *Maynard* contended that there was no novation.

Mr. *Rodwell*:—The acts done by Mrs. Dupré were done by her as agent of the executors. The practice of insurances offices is to look to the parties who pay premiums. Dealings with the offices could hardly go on if, in each case of a circular or notice, there must be an investigation on the part of the office with regard to the persons paying premiums as to whether they are the duly constituted agents of the policy-holders.

LORD CAIRNS:—They are agents to make payments, not agents to change policies. Could the office have negotiated with Mrs. Dupré for a formal instrument, in writing, to change the liability on a policy which belonged to the executors? This is not like *Balfour's Case*, before me; where the husband had power to drop the settled policy, and to change from one office to another. There is double agency here; Mrs. Dupré is the agent of the executors, the bankers are the agents of Mrs. Dupré. She is agent of the executors to pay premiums as the contract stood. Her bankers are her agents to pay by her authority to the *Family Endowment*.

Mr. *Rodwell*:—The whole course of dealing shews that Mrs. Dupré acquiesced in the substitution of the *Albert*.

A reply was not called for.

LORD CAIRNS:—I do not think this case is at all like any of those that have been decided. If Mrs. Dupré had been the actual and complete owner of the endowment contract or policy, and if

it had been proved, as I do not think it is, satisfactorily, that the letter giving the details of the amalgamation had reached her and had been read by her, and if after that she had in her own person, or by an authority given after receiving the letter, paid the premium which became due in 1861, even then I should have doubted very much whether the case was governed by those cases which have decided that the liability of the *Family Endowment*, under certain circumstances, came to an end, and the liability became that of the *Albert*. It certainly would be, at all events, coming very close to the confines of the different classes of decisions to hold that the making of the final payment which completed the chain of payments at that time, under those circumstances, when the companies were almost in the midst of their amalgamation, and the taking of a receipt of the kind proved, would have been a termination of the liability of the *Family Endowment*, and the assumption of it by the *Albert*. But I repeat that is not the case I have to decide, and I do not desire to express any opinion as to what ought to be done if that had been the case. The case I have to deal with is altogether different.

Mrs. Dupré was not the owner of the policy. The legal owners were the executors of Mr. Dupré, of whom she was not one. The executors were entered in the books of the *Family Endowment* as the owners of the policy. In the Renewal Premium Book, a book relating to the payment of premiums only, an entry is found that the person to whom notices were to be sent was Mrs. Dupré. That is a different matter. That merely means that Mrs. Dupré was the person who conveniently might receive those notices which were connected with the payment of the premiums, that is, the premiums payable to the *Family Endowment*, because hers was the hand which was authorized, I will assume, by the executors, to make those payments to the *Family Endowment*. Mrs. Dupré, therefore, being in this position was, in my judgment, the agent of the executors, with the limited authority, at the utmost, of continuing to make the payments which ought to be made to keep that policy in the *Family Endowment* alive.

Then, what does she do? In the latter part of 1860, before the time arrives for the final payment, before any premium had

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been paid otherwise than to the *Family Endowment*, Mrs. Dupré gives an order to her bankers to continue to pay the premiums to the *Family Endowment*, according to the tenour of the receipt which had been given by the *Family Endowment* in 1860. Her letter was in these words :

GENTLEMEN,—

27 August, 1860.

I beg that you will be good enough to pay annually on my account, unless otherwise instructed, £15 5s. 8d., on the 1st July of each year, to the *Family Endowment Life Assurance and Annuity Society*, of which I enclose this year's receipt.

Mrs. Dupré being, as I hold, only a limited agent herself, gives to her bankers again only a limited authority to act as her agent, that authority being to continue to make those payments to the *Family Endowment*.

Now, it must be remembered we are here on a question of intention, not on any abstract rule of law, but on a question of what the real intention of the parties was. Was it her intention, with an intelligent mind, to put an end to the liability of the *Family Endowment*, and to take that of the *Albert*? It appears to be impossible to suppose that Mrs. Dupré, under the circumstances, had herself any such intention, or that the executors, the legal holders of the policy, had any such intention. It being a question of intention, the case comes to what I put in the course of the argument: Suppose even that you had one of these agents, with a limited authority, entering into a positive contract with the *Albert* to substitute the liability on the policy, would that positive contract have any effect? Then it is an *a fortiori* case when one asks was there any intention on the part of the limited agents to enter into that contract, and I am obliged to say that I see no proof of such intention. Therefore, I think the claim must rank against the *Family Endowment*.

The claimant is entitled to costs.

Solicitor for Mr. Baring: Mr. Maynard.

Solicitors for *Family Endowment*: Messrs. Markby & Tarry.

MOONEY'S CASE.

*Policy—Novation—Mortgagor and Mortgagee—Account.*1872
June 12.

Novation consequent on amalgamation established against a policy-holder, in the following circumstances: He had mortgaged to the trustees of the insuring company his policy and an annuity payable to him by a third party, with a covenant by him to pay the premiums on the policy, and with a provision that the trustees might, if they thought fit, use a sufficient portion of the annuity to pay the premiums, but should not be bound to do so; on the amalgamation, the mortgage was transferred to the transferee company; they received the annuity and paid thereout the premiums to themselves, as on a substituted policy.

Mortgagor of policy and annuity held bound, in account between himself and mortgagee, by payment of premiums out of the annuity, made, with his assent, by mortgagee.

THIS was an application for the decision of the Arbitrator on a claim of Mr. *L. R. Mooney* to prove against the *Family Endowment*, on a policy on his life, dated 6 December, 1858, issued by the *Family Endowment*, for £1500.

By a mortgage deed of 6 December, 1858, made between Mr. *Mooney* and Mr. *C. H. Latouche*, with two others, therein called the mortgagees, being in fact the trustees of the *Family Endowment*, in consideration of £1300, lent as therein mentioned to Mr. *Mooney* by the mortgagees, a bond of the Lord Mayor, Aldermen, and Burgesses of the City of *Dublin*, dated 3 May, 1856, and all money due and to become due in respect of the annuity of £150 for the life of Mr. *Mooney* secured by that bond, and the policy, were assigned to the mortgagees by way of mortgage for securing the repayment to them of £1300, with interest.

The subsequent correspondence and transactions in connexion with the mortgage between Mr. *Mooney* and the *Family Endowment* and *Albert* were numerous.

Mr. *Shapter*, Q.C., (Mr. *Rawlinson* with him) was for Mr. *Mooney*.

Mr. *Rodwell* was for the *Family Endowment*.

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Mr. *Shapter* contended that in the circumstances there was no substitution of the liability of the *Albert* for that of the *Family Endowment*.

Mr. *Rodwell* was not called on.

LORD CAIRNS :—Mr. *Mooney* mortgaged to the trustees of the *Family Endowment* an annuity to which he was entitled from the Corporation of *Dublin*, and also a policy effected on his life in the *Family Endowment*. He covenanted with the trustees of the *Family Endowment*, that he would himself pay the premiums due on that policy from time to time, and there was a provision in the deed that the trustees of the *Family Endowment*, if they thought fit, might use a sufficient portion of the annuity mortgaged to them to pay the premiums on the policy, but that it was not to be obligatory on them to do so. In process of time, in 1861, the *Family Endowment* transferred all their assets and all their liabilities to the *Albert*. They transferred by a general transfer, among other assets, the mortgage in question, with all its rights and liabilities, and from that time onwards the *Family Endowment* ceased to do any business; and in short, probably the best expression for ordinary purposes is that which is used again and again by Mr. *Mooney* in his letters and notices,—the *Family Endowment* ceased to exist.

There is no doubt that *de facto* the policy, as a policy in the *Family Endowment*, never was kept up; that is to say, there is no doubt that *de facto* no premiums for the purpose of keeping up the policy ever reached, or ever were intended to reach, the *Family Endowment* after the transfer to the *Albert*; because, as I have said, the *Family Endowment* were not having or holding any funds, or receiving any premiums.

In that state of things, it appeared to me in the first place, that the first, if not the only, question—I rather thought the only question—to be decided to-day was the claim which Mr. *Mooney* makes to be entitled to rank as a policy-holder against the *Family Endowment*. On that point, the case seems to me to be free from

any kind of doubt. That policy, *de facto*, has not been kept up. No premiums were paid to the *Family Endowment* after 1861. No premiums were intended to be paid to the *Family Endowment* after 1861. Mr. *Mooney*, who was under a covenant to pay premiums, never did so. The trustees of the *Family Endowment*, who were the mortgagees, were under no obligation to apply the annuity in keeping up that policy, and in point of fact they did not apply the annuity or any part of it in keeping up that policy. If, therefore, that were the whole of the case, it would be a simple case, and Mr. *Mooney* would have failed to establish any claim against the *Family Endowment*.

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But then it appeared to me that it might become a question, under the documents on which Mr. *Mooney* relies, although the *Family Endowment* policy was not kept up, yet, inasmuch as the *Albert* do appear to have used, and do admit that they used, a part of the annuity received by them as assignees of the mortgage from time to time in paying premiums to the *Albert*, treating the *Family Endowment* policy as a policy handed over to the *Albert*, and kept up by the *Albert* as one of its own policies, whether, in an account between Mr. *Mooney*, as mortgagor, and the *Albert*, as now mortgagees, that is, assignees of the mortgage, he would not have a right to contend that he never had authorized any deduction out of his annuity to be made for the purpose of paying premiums to the *Albert* to keep up an *Albert* insurance. That seemed to me to be a matter open to doubt. I thought this would not have been the most convenient time to dispose of it; but having gone fully into the case, I can, satisfactorily to myself, dispose of that question also.

It appears to me, on looking at the documents, that it is quite out of Mr. *Mooney's* power to contend that he did not perfectly know and perfectly assent to the keeping up as an *Albert* policy of that which had been a *Family Endowment* policy, and to the deduction out of his annuity from time to time of the proper sums to pay the premiums, in those circumstances, to the *Albert*.

Here is a gentleman perfectly able to understand business, who, with his eyes open, during five or six years, admits in letter after letter that, on the one hand, the *Family Endowment*, with which company he had had dealings, had ceased to exist, and that, on

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the other hand, the company with which he had then to deal was the *Albert*, that company being plainly admitted by him to have the right to deduct out of the sums coming to him the premiums paid to the *Albert*.

I am clearly of opinion, on the one hand, that he has no claim against the *Family Endowment*, and on the other hand, that, with his assent, the *Family Endowment* policy has been kept up out of his annuity as a policy in the *Albert*.

Solicitors for Mr. *Mooney* : Messrs. *Bannister & Fache*.

Solicitors for *Family Endowment* : Messrs. *Markby & Tarry*.

HOW'S EXECUTORS' CASE.

Policy—Novation—Protest—Bonus.

1872

June 12.

Novation consequent on amalgamation not established against the executors of a policy-holder, in the following circumstances: The policy-holder was a member of a partnership of solicitors, who were agents of the insuring company; on the amalgamation, the partnership received the amalgamation circular to policy-holders and a circular to agents, inquiring whether they desired to continue to be agents of the combined company; to those circulars the partnership answered that, after careful inquiries, their duty to their clients required them to decline to recognise the amalgamation, and to rely exclusively on the liability of the insuring company; that they declined the position of agents, but apprehended that they would be entitled to commission on premiums which they might pay on the existing policy and another; after remonstrance on behalf of the amalgamated company, they declared they saw no reason for altering their view; the policy-holder and his executors continued to pay premiums to the transferee company, and took receipts of that company.

Evidence held to disprove receipt of bonus circular.

THIS was an application, on a Case stated by agreement, for the decision of the arbitrator on the claim of the Rev. *Wm. Walsham How* and *Mr. T. M. How*, as executors of *Mr. Wm. Wybergh How*, to prove against the *Family Endowment* on a policy for £300, with profits, No. 6007, dated 11 October, 1858, issued to *Mr. Wm. Wybergh How* by the *Family Endowment*, on the life of *Wm. Story*.

Mr. Wm. Wybergh How was a solicitor at *Shrewsbury*, practising in partnership with *Mr. T. M. How*, one of the executors, under the firm of *How & Son*. Messrs. *How & Son* acted as agents at *Shrewsbury* for the *Family Endowment*. In March, 1861, Messrs. *How & Son*, as agents, received a circular from the *Family Endowment* informing them of the amalgamation with the *Albert*, and inquiring whether they desired to continue to be agents to the combined company. At the same time they received the amalgamation circular issued to policy-holders of the *Family Endowment*, with the prospectus of the *Albert*. In consequence of these circulars, *Mr. T. M. How*, on behalf of Messrs. *How & Son*, and of *Mr. Wm. Wybergh How*, made inquiries personally, and through

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his agents in *London*, Messrs. *West & King*, solicitors, respecting the *Albert*. These inquiries resulted in the following letter from Messrs. *How & Son* to Mr. *Galsworthy*, who had been actuary and secretary of the *Family Endowment*, and had gone into the office of the *Albert*:

Shrewsbury, 5 April, 1861.

Dear Sir,—We could not reply to your circular of the 16th ult. immediately, as we felt it necessary to make very careful inquiries on behalf of our clients, who are policy or annuity-contract holders of the *Family Endowment Society*, before doing so.

As you have seen our agent, Mr. *King*, on the subject, you will not be surprised at our adding that we have very unwillingly come to the conclusion that our duty to our clients requires us to decline to recognise the combination with the *Albert and Medical Office*, and to rely exclusively upon the liability of the *Family Endowment Society*.

This being the case, we, of course, have to decline the position of agents to the combined company which you are good enough to offer us; but we apprehend that we shall be entitled to the usual commission upon all renewal premiums which we may pay upon the existing policies on Captain *Jenkins'* and Mr. *Story's* lives.

We are, &c.,

E. H. Galsworthy, Esq.

How & Son.

In answer, Messrs. *How & Son* received the following letter from Mr. *Galsworthy*:

ALBERT MEDICAL AND FAMILY ENDOWMENT LIFE ASSURANCE COMPANY.

42, *New Bridge Street*, *London*, *E.C.* (corner of *Ludgate Hill*),

6th April, 1861.

Dear Sirs,—The contents of your letter of yesterday surprise me much. I certainly thought that your agent left me satisfied of what is a fact, namely, that the change has been carried out for the express benefit of the policy-holders of the *Family Endowment Society*, inasmuch as it confers upon them much greater security and far better prospects of profits. I explained this, and the reason why, to your agent, who, I regret to find, must have misunderstood me, notwithstanding that he appeared to admit the force of my explanations.

I hope you will yet change your mind and accept an agency to this company. If you are yourselves coming to town, I should be most happy to explain to you what I endeavoured to explain to your agent, who is the only gentleman out of a great many who have called upon me, who, as I gather from your letter, failed to see the advantages conferred upon assurers of the *Family Endowment Society* by the change effected for their benefit, after much labour and anxiety on our parts.

I am, &c.,

Messrs. *How & Son*, *Shrewsbury*.

EDWIN H. GALSWORTHY.

Messrs. *How & Son* replied as follows :

Shrewsbury, 8th April, 1861.

Dear Sir,—We are quite ready to believe that you and all those acting for the *Family Endowment Society* have done what you considered best for the interest of the policy-holders, and it is quite possible that your view may be sounder than ours ; but ours has been arrived at after due inquiry and much anxious consideration, and we see no reason for altering it. We sincerely wish we could come to a different conclusion.

We are, &c.,

E. H. Galsworthy, Esq.

How & Son.

Messrs. *How & Son* did not alter their determination, and never acted as agents of the *Albert*.

On 25 October, 1861, Messrs. *How & Son*, on behalf of Mr. *Wm. Wybergh How*, as the assured, and of Captain *R. Jenkins*, a client of theirs, who was also assured in the *Family Endowment*, wrote and sent to Mr. *Galsworthy* the following letter :

		£	s.	d.
No. 6007	Mr. <i>W. Story</i>	19	3	3
„ 6015	Capt. <i>R. Jenkins</i>	42	0	0
		61	3	3
	Commission	3	1	1
		£58	2	2

Dear Sir,—We have directed payment of the above by your drawing on Messrs. *Glyn & Co.* as usual.

We are, &c.,

Shrewsbury, 25 Oct., 1861.

How & Son.

E. H. Galsworthy, Esq.

In answer, Messrs. *How & Son* received the following letter :

[ALBERT MEDICAL AND] FAMILY ENDOWMENT LIFE ASSURANCE COMPANY,
7, Waterloo Place, Pall Mall, London, S. W.
28th Oct. 1861.

Dear Sirs,—Your favour of the 25th instant came duly to hand, and to-day we have received from Messrs. *Glyn & Co.* the cash balance of your account, for which we are obliged.

Yours faithfully,

EDWIN H. GALSWORDTHY,

Messrs. *How & Son*, Solicitors, Shrewsbury.

Act. and Sec. Ind. Dep.

In the printed heading to this letter as produced, the words *Albert Medical and* appeared struck out with pen and ink, and the

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claimants alleged that the words were so struck out before the letter was sent to Messrs. *How & Son*.

Mr. *Wm. Wybergh How* died in November, 1862.

It was alleged on behalf of the *Family Endowment* that in 1863 a bonus was assigned by the *Albert* in respect of the policy in question, and that on 23 October, 1863, a bonus notice was sent to the executors, and that, they not having answered the notice, a sum of £7 11s. was added to the sum assured by the policy, as a reversionary bonus. The executors did not admit that a bonus was so assigned; denied that notice thereof was forwarded to or received by them; alleged that they did not at any time know that any bonus had been assigned in respect of the policy; and did not admit that any sum had been in fact added to the policy, as a reversionary bonus, or otherwise.

Mr. *Wm. Wybergh How* and his executors paid the premiums payable on the policy down to and inclusive of 1868. The receipts, after becoming *Albert Medical and Family Endowment* receipts, were, in and after October, 1863, *Albert* receipts, the last being as follows:

Receipt.
No. A. 15229.
F. E. Policy No. 6007
Sum assured £300
Life *W. Story*.
Premium £19 3s. 3d.
Interest on £
For 12 months
From 11 Oct. 1868,
Agent,
Midland Branch.

ALBERT LIFE ASSURANCE COMPANY,
7, Waterloo Place, Pall Mall, London, S.W.
Established 1838.

Received this 2nd of November, 1868, the premium for the renewal of policy mentioned in the margin hereof, the amount of which premium and the period for which it is received are also mentioned in the margin.

C. LEBON,
for JAMES McLAUCHLAN,
Manager.

Mr. *T. M. How* made the following affidavit:

1. I have read the copy of the affidavit of *H. W. Smith*.
2. I say most positively that I never received the bonus notice and form, which in such affidavit is alleged to have been sent to me, or any other notice whatever of the bonus referred to in such affidavit. I have carefully preserved every circular or letter which I ever received in relation to the policy No. 6007 in the *Family Endowment* from 1861 to the present time, and copies of every letter written by me or by my order in reference thereto during the same period, and the same are now in my possession, and there is no such bonus notice among them, or any reference of any kind thereto, and after diligent and careful search

through my papers I have been unable to find the said alleged or any other notice whatever of the said bonus; and as it is my practice immediately on receipt of every bonus notice relating to any policy in my possession, whether held for myself or for my clients, to place it with such policy, I am satisfied that I never received any such notice as alleged. I speak with the more confidence on this point, because, when in 1861 I was making inquiries, and through my *London* agents was causing inquiries to be made, respecting the *Albert*, with a view to enable me to determine whether or not it would be expedient to adopt the amalgamated company as the insurers in lieu of the said society, my attention was expressly directed to the fact that if I should determine (as I did) to decline to recognise the amalgamation, and to rely exclusively on the liability of the *Family Endowment*, I should thereby forego any claim whatever to bonuses (if any) subsequently declared by the amalgamated company; and I feel convinced that under these circumstances, if I had received in October, 1863, as alleged, any notice of a bonus on the said policy, I should at once have written to repudiate it, and to refer to my letters written in 1861 to Mr. *Galsworthy*.

3. On or about the 29th day of October, 1861, I received from Mr. *Galsworthy* the letter dated 28th October, 1861 (now produced). That letter is in precisely the same state now as when I received it at the date aforesaid, and the words *Albert Medical* and in the printed heading thereof had been then struck through with the pen, as the same now appear therein.

Mr. *Speed* was for the claimants.

Mr. *Rodwell* was for the *Family Endowment*.

Mr. *Speed* contended that there was a repudiation of the *Albert* on the amalgamation, and that there was no evidence that the bonus notice was ever sent, and its receipt was denied.

Mr. *Rodwell*:—Much stress need not be laid on the bonus notice, and there is a conflict of evidence respecting it. But the protest was insufficient: *Wood's Case* and *Rivaz's Case* in this Arbitration.

A reply was not called for.

LORD CAIRNS:—I must say that Mr. *How's* statement is satisfactory. He is a gentleman accustomed to business. He states that he has kept every paper connected with this policy together; he positively denies that he ever received the notice relating to the bonus; and he assigns an intelligible reason for being

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CASH.

distinct in his recollection about it, namely, that he had held out to him when making inquiries in *London* the inducements that might lead him to change from one company to the other, connected with the bonus that the *Albert* was likely to declare. He says he was not influenced by those inducements, but he is sure that the circumstance that they had been held out to him would have made him remark any letter connected with the bonus in the *Albert* that might have been sent to him. Therefore, I must take it that the notice never reached Mr. *How*.

Putting out of consideration for the moment the cases that have been referred to, the matter stands thus. The circulars with regard to the amalgamation were sent to Messrs. *How & Son*, and they were to answer two purposes, to obtain the consent of the clients of the firm of *How & Son* to change their policies from the one company to the other, and to induce the firm to act as agents of the amalgamated company, the *Albert*. In answer, Messrs. *How & Son* say they had felt it necessary to make very careful inquiries on behalf of their clients, and that they had very unwillingly come to the conclusion that their duty to their clients required them to decline to recognise the combination with the *Albert and Medical*, and to rely exclusively on the liability of the *Family Endowment*. Then, after receiving a letter remonstrating with them on the determination which they had come to, they again write :

We are quite ready to believe that you and all those acting for the *Family Endowment* have done what you considered best for the interests of the policy-holders, and it is quite possible that your view may be sounder than ours ; but ours has been arrived at after due inquiry and much anxious consideration, and we see no reason for altering it.

The determination thus adhered to was a determination to rely exclusively on the liability of the *Family Endowment*. And they couple that with the statement that they decline the agency offered, and that they would go on paying the premiums, and would expect (as to that, whether they were right or wrong, I have nothing to say) to receive a commission on premiums which they continued to pay. I cannot understand these steps as meaning anything but this: We pay our premiums to keep alive the policy, but we give notice that we do so, relying exclusively

on the liability of the *Family Endowment*. And it is, perhaps, not unimportant to observe that on 28 October, 1861, in acknowledging some of the premiums so paid, Mr. *Galsworthy* writes a letter striking out of the heading *Albert Medical and*, making it a letter from the *Family Endowment* alone. It seems to me that, in that state of things, the onus was entirely thrown on the persons acting on this occasion either for the *Family Endowment* or for the *Albert*, to displace the position that Mr. *How* had taken up. I do not say they might not have displaced that position, but until they did something to displace it, he was in the position of a person who said that he would make his payments, relying on the liability of the *Family Endowment*.

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Two cases have been referred to which have been decided by me. I wish it was in my power to lay down a general formula which would decide all cases connected with the different branches of the inquiry which come before me, but I can only deal with each case as it occurs.

In *Wood's Case* it appeared to me beyond all doubt, that every precaution a man could take had been taken by Mr. *Wood* in order to prevent a shifting of liability from one company to the other. I went through the enumeration of those precautions, but I did not mean to say that nothing short of what he had done would protect a policy-holder.

The other case, *Rivaz's Case*, is exactly an illustration of what might have been found in this case, but is not found in it. Mr. *Rivaz* had got the circular from the head office of the company. One thing I adverted to was the fact that he had not communicated with those from whom the circular emanated, but had gone and had a gossiping conversation with the subordinate agent of the company in *Manchester*. I said the proper thing to have done when he received from the head office the circular to which he objected, was to have written to that head office stating his objection. That is what Mr. *How* has done in this case, which Mr. *Rivaz* omitted to do. That was not all; Mr. *Rivaz* went to the office in *Manchester*; and he said: I do not want to be transferred to the *Albert*, I object to being transferred. The person to whom he said that did not answer: Well, I understand that is your position; but he said: You cannot do that, you must pay

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your premium or your policy is gone. Mr. *Rivaz* might have challenged that and said: That is bad law; but he did not, he paid his premiums. I say again, if that had happened in this case, if after Mr. *How's* letter Mr. *Galsworthy* had written back and said: I hope you will not let that state of things continue; we will not let the premiums be paid in that loose way; you must choose in a more definite way, and say on what footing you are going to pay: he might have thrown back the onus upon Mr. *How* and have altered the position that Mr. *How* took up. But he did not, he remained quiescent, and therefore Mr. *How's* construction of the footing on which he was going to pay the premiums remains.

It seems to me that Mr. *How's* claim is against the *Family Endowment*.

Solicitors for the Claimants: Messrs. *West & King*.

Solicitors for the *Family Endowment*: Messrs. *Markby & Tarry*.

COUNT D'ALTE'S CASE.

1873

Feb. 12.

Policy—Novation.

Novation consequent on amalgamation not established against a policyholder, in the following circumstances: On going abroad, he directed his solicitors to pay the premiums on his policy; the amalgamation took effect during his absence abroad, which lasted for some years; after the amalgamation, his solicitors paid the premiums at the office of the transferee company, taking receipts of that company; on his return, he received no notice or proposal respecting the amalgamation; he continued to pay the premiums to and took receipts of the transferee company; he also inquired in writing of the transferee company what was the then value of his policy, and what would be the increase of value every half-year.

THIS was an application, on a Case stated by agreement, for the decision of the Arbitrator on a claim of Count *D'Alte* to prove against the *Medical*, on a policy issued by the *Medical*, on his life, for £3000, without profits, No. 2598, dated 14 May, 1850.

In 1855 Count *D'Alte*, who had been resident here, left *England* on being appointed Portuguese Minister in *Italy*. He directed his solicitors, Messrs. *Fladgate & Co.*, to pay the premiums in his absence. In 1860 the *Medical* was amalgamated with the *Albert*. After the amalgamation Messrs. *Fladgate & Co.* paid the premiums at the *Albert* office, and took receipts first of the *Albert and Medical* and then of the *Albert Medical and Family Endowment*. At the beginning of 1863 Count *D'Alte* returned to *England*. Thenceforth he or his then solicitors, Messrs. *Beachcroft & Thompson*, paid the premiums at the *Albert* office, taking first *Albert Medical and Family Endowment* receipts, and in and after 1866 *Albert* receipts, which were in the following form:

Receipt No.
Med. Policy No. 2598.
Sum assured £ .
Life
Premium £ .
Interest on £
for months
From 186 .

ALBERT LIFE ASSURANCE COMPANY,
7, Waterloo Place, Pall Mall, London, S.W.
Established 1838.

Received this day of , 186 , the
premium for the renewal of policy mentioned in the
margin hereof, the amount of which premium and
the period for which it is received are also men-
tioned in the margin.

(Signed by two directors.)

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An affidavit made by the clerk of Messrs. *Fladgate & Co.*, who attended to the business, was filed denying (according to recollection) receipt of any notice or circular regarding the assent or non-assent of Count *D'Alte* to the amalgamation, and stating his having carefully searched among the papers and letter-books without finding any such notice or circular, or any communication on the subject.

Count *D'Alte* had made an affidavit, in which (among other things) he denied that any circular or other letter with reference to the amalgamation ever reached him.

An affidavit had been filed on behalf of the liquidators, stating that on search among the papers of the *Albert* with reference to the claim a paper had been found, which was as follows :

Life insured in £3000.	
Age when insured	Age now
40.	55.
Premium paid	Premium that would
annually,	be paid now annually,
£87 0 0	£159 7 6
Amount of premiums paid in the fifteen years,	
£1305 0 0	

Wish to know what is the value of the policy now, and what will be the increase of value every half-year.

[Indorsed]
VISCOUNT D'ALTE,
12, Gloucester Place,
Portman Square.

This was admitted to be in Count *D'Alte's* writing. It appeared to have been written towards the end of 1864.

Mr. *Cecil Russell* was for Count *D'Alte*.

Mr. *G. O. Morgan*, Q.C., (Mr. *Lemon* with him) was for the *Medical*.

Mr. *C. Russell* submitted that the payments were made to the *Albert* as agents of the *Medical*. The position of the claimant was peculiar. He was a foreigner, abroad at the time of the amalga-

mation. His solicitors, who were his agents for the purpose of paying premiums, continued to pay them at the only office where payment could be made. Then he returned and paid them himself at the same office, following the practice he found. His policy was without profits, and therefore no motive could be suggested why, having effected a policy with a company with which he was satisfied, he should have accepted the security of the *Albert* without any further advantage.

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Mr. Morgan:—This is similar to the *Whitehaven Bank Case* and others, where the policy-holder having drifted into relations with a new company, must be taken to have adopted the security of the new company instead of the old. The paper found among the *Albert* papers is evidence of a dealing, more than a year after Count *D'Alte* returned to *England*, with the *Albert*, on the footing of their being the company liable on the policy.

A reply was not called for.

LORD CAIRNS:—In disposing of this case, I do not think it will be necessary to refer to the numerous decisions in this Arbitration on the subject of transfer of liability. I see no reason to be dissatisfied with any of those decisions. But this case seems to me to stand upon ground which removes it from all doubt, and affords no basis on which to hold that a transfer of liability has taken place.

When Count *D'Alte* left this country he made his solicitors his agents to do one particular thing, that is to say, to pay the premiums on a policy of insurance effected in the *Medical*. They had no authority to do anything more than that; and if they had assented in any way to any alteration of the liability, I should have been obliged, as far as the materials before me go, to hold that they had exceeded their powers. But even they say they have no recollection of receiving any communication from the *Medical*, indicating a proposal to alter the liability from the *Medical* to the *Albert*; and I cannot assume, in the absence of evi-

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dence, that any such communication was made to them. I repeat, even if such a communication had been made to them, I should have held they had no authority of themselves, as far as I can see, to assent to a transfer of liability, and I should not have held that notice of the contents of a circular to them was constructive notice to their principal. There must be a direct and precise communication in these cases with the person who is to be affected.

When Count *D'Alte* returned to this country there is no evidence whatever of any communication made to him, or of any proposal addressed to him, or of any invitation held out to him. The step which the amalgamation deed between the *Medical* and the *Albert* specified as a step which was to be taken, namely, that the policy-holders in the *Medical* should be invited to substitute for their subsisting policies other policies to be issued by the *Albert*, does not appear to have been taken, as far as the evidence goes, with reference to Count *D'Alte*. He says—and I see no reason to doubt the evidence—that, coming home to this country, he found that the office at which the premiums on the policy were being paid was the office of the *Albert*; accordingly, he went there and paid the premiums; and the receipts given to him are receipts by the *Albert* for certain sums according to the tenour of the policy described and issued by the *Medical*, as they are for some time expressed, the form being afterwards altered, and not referring to the *Medical* policy in the body of the receipt. That is a proceeding entirely consistent with the amalgamation deed, which provided, with regard to policy-holders who should decline to accept substituted policies, that they should be entitled to keep their policies on foot by paying the premiums to the *Albert*. If a communication had been made to Count *D'Alte*, inviting him to consent to a substitution, and he had acted on it without returning any answer, it might have been different; but there is no evidence that any communication was made to him whatever, and he was merely doing what the deed contemplated, paying the premiums to the hand entitled to receive them, until the time that some substitution of liability should take place.

The only other ingredient introduced into the case is that it appears that, in the state of things which I have described, Count *D'Alte* hands in, I will assume to the office of the *Albert*, although

the paper itself does not say so, a paper of inquiry, stating the amount insured, the age, the premium, the amount of premiums paid, and adding this :

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D'ALTE'S
CASE.

Wish to know what is the value of the policy now, and what will be the increase of value every half-year.

This does not appear to me to be either a dealing or a negotiation ; it is simply a question asked, not shewing a fixed desire or definite intention on the part of the person asking it to enter into a treaty or negotiation. On the contrary, he asks for information which would be entirely consistent with his keeping up the policy for any number of half-years longer, waiting for the increased value which he assumes will take place. It appears to me to be only *idem per idem*. If, before this time, I had found that Count *D'Alte* had accepted the liability of the *Albert*, then I should have thought this was an inquiry put to the *Albert* consistently with that transfer of liability. But if, on the other hand, I am to draw the inference from what happened that he was paying his premiums to the *Albert* as the agents of the *Medical*, then I should regard this as an inquiry put to the *Albert* in the same character, that is, as the persons who were receiving the premiums for the original *Medical*. I do not think it carries the case any further ; it leaves it where it was ; and leaving it where it was, there is nothing upon which I can hold there is any liability in the *Albert*, and therefore he will rank against the *Medical*.

His claim has been resisted, and he must have his costs.

Solicitors for Count *D'Alte* : Messrs. *Beachcroft & Thompson*.

Solicitors for *Medical* : Messrs. *Kendall & Congreve*.

1873
April 21.

BUCHNER'S CASE.

Policy—Novation—Protest.

Novation consequent on amalgamation not established against a policy-holder, who, notwithstanding the inducements held out by an amalgamation circular, and by an agent, refused to have his policy exchanged or indorsed, and, though paying his premiums to the transferee company, did so for the purpose, as shewn by the facts proved, of keeping alive his claim against his insuring company.

THIS was an application, on a Case stated by agreement, for the decision of the Arbitrator on a claim of Mr. *Ludwig G. C. M. Buchner*, of *Frankfort-on-the-Maine*, to prove against the *Medical* on a policy issued to him by the *Medical*, on his own life, without profits, for 5000 florins, dated 14 August, 1846.

At the date of the policy, and up to 10 January, 1861, Mr. *J. A. Varrentrapp*, of *Frankfort*, was the agent in *Germany* of the *Medical*. In connexion with the amalgamation of the *Medical* with the *Albert* a circular, dated October, 1860, was sent by Mr. *Varrentrapp* to the German policy-holders, including Mr. *Buchner*, which is the circular mentioned in the *German Life Assurance Company's Case* above.

The last receipt for premium before the winding-up of the *Albert* was as follows (as translated) :

ALBERT LIFE ASSURANCE COMPANY,
 7, Waterloo Place, Pall Mall, London,
 Founded 1838.

General Agency, Berlin, 61A, Jägerstrasse.

Premium Receipt, No. 26,161, on Policy No. 953, G. 14.

The undersigned company hereby certifies that it has received the sum of fl.167, 30kr. as the yearly premium on the above-named policy, on the life of Herr *L. G. C. M. Buchner*, and declares the said policy to be renewed until the first hour of 14 August, 1870, according to the conditions contained therein.

London and Berlin, 14th August, 1869.

Premium, fl.167.30.

Albert Life Assurance Company,
 and in its name,

George Lewine, } *W. Page Phillips*, Director.
 General Attorney. } *G. Paulet*, Director.

Mr. *Buchner* had made an affidavit, which, after stating the

receipt by him of the circular of October, 1860, proceeded as follows : BUCHNER'S
CASE.

2. I absolutely refused to send in my policy to be exchanged for a policy in the *Albert*, or to be indorsed in accordance with the terms of the said circular, and I, either in writing or verbally, objected to have anything to do with the *Albert*, and insisted upon retaining my policy in and my rights against the *Medical*. I do not recollect whether I sent in any written protest, but if I did I kept no copy thereof.

3. I was then informed of the resolutions which the *Medical* had passed, by which policy-holders in that society had the right to keep up their policy as against such society by paying their premiums to the *Albert*, and I accordingly did avail myself of that right.

4. *J. A. Varrentrapp* endeavoured by circulars and otherwise to induce me to exchange my policy for one in the *Albert*, or to have an indorsement put thereon at once, but I absolutely declined to recognise the *Albert* except as the agent of the *Medical* for the purpose of receiving premiums in accordance with the terms of the said resolutions.

Mr. Varrentrapp had made affidavits, and had been cross-examined on interrogatories. Part of his deposition was as follows :

Mr. Buchner refused to have his policy exchanged against one of the *Albert* and *Medical*. He did so in 1860 ; he did so afterwards. These refusals were made to me orally. I do not believe that refusal was made in writing, but I cannot state now, after twelve years, whether he may not have written. It is possible that a note or a notice by myself, or by my clerks, may be found in or on the cover containing the papers relating to this insurance case, which were delivered by me to *Mr. Lewine* by order of the *Albert*. I know that he stated that he could not be forced to accept the *Albert* (which called itself then the *Albert* and *Medical*) instead of the *Medical*. He said the whole proceeding was illegal. I can add that he was very excited about the transfer. Certain resolutions taken at meetings of the *Medical*, and of which I annex the copy marked A, which was sent to me, and which is signed by *Mr. Singer*, the secretary of the *Medical*, were communicated to him. They were communicated orally, and in a translation of which I can give the exact wording. These resolutions, or the translation thereof, may have been read to him by one of my clerks or by myself. A copy of the resolutions, or of the translation thereof, may have been handed to him, but I am not at all certain about this. As far as I can remember, no circular was issued setting forth these resolutions.

Mr. Beddall (Solicitor) was for the claimant.

Mr. G. O. Morgan, Q.C., (*Mr. Lemon* with him) was for the *Medical*.

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CASE.

LORD CAIRNS :—The decision of this case must ultimately turn upon what is the correct view to take of the facts. In order to estimate the value of the parol evidence, it is necessary to bear in mind some of the circumstances connected with the written documents.

The position of the *Medical*, with regard to the *Albert* and to the contract for amalgamation generally, was somewhat different from those of the other companies which amalgamated with the *Albert*. In the case of the *Medical*, resolutions were entered into, the fifth of which said that policy-holders in the *Medical* should be invited to substitute for their subsisting policies other policies to be issued by the *Albert*. Then the sixth said that the persons entitled to participate in the profits, who should accept such substituted policies, or who should otherwise accept engagements by the *Albert*, instead of preserving the rights that would belong to them as policy-holders in the *Medical*, should be entitled to share in subsequent bonuses, and so on. And then the seventh resolution said :

The policy-holders in the *Medical* who shall decline to accept such substituted policies shall be entitled to keep on foot their present policies by paying the premiums thereon to this company [the *Albert*], who shall undertake the liabilities of the *Medical* in respect of such policies.

On the construction of those resolutions, and especially the seventh, I have no doubt ; and it is the construction I have always, either in terms or in substance, put on them. I have no doubt that the seventh resolution is a provision for keeping alive claims as against the *Medical* on policies the holders of which should decline to accept *Albert* policies. I cannot adopt the construction which Mr. *Morgan* desired to put on it, that the effect was that, after declining to accept such substituted policies, the persons who so declined should pay their premiums to the *Albert*, and thereby do nothing more, and get nothing more, than drive the *Albert* to undertake the liabilities of the *Medical*. The premiums are to be paid to the *Albert*, and it is given as an explanation, that they undertake the liabilities of the *Medical*. The premiums are to be paid to them for that reason ; but the persons who pay the premiums, having declined to accept *Albert* policies, are by so paying to keep alive their right, without more, against the *Medical*.

Accordingly, I find the German circular, after speaking of the resolutions, and stating that the business of both companies was to be carried on under the name of the *Albert and Medical*, states :

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These united companies enter for the future into all the rights and obligations of the *Medical Invalid and General Life Assurance*. According to the agreement, the accumulated funds of our society are to be invested separately and securely to meet its own liabilities, and the policy-holders will be offered a great additional security in the combined income of the united societies.

That I understand to be a statement that the accumulated funds of the *Medical* would be invested separately and securely to meet its own liabilities, that is to say, such of its liabilities as continued to be its own, not to meet liabilities which would, by acceptance of substituted policies or by indorsement, become liabilities of the *Albert*, but to meet those liabilities of its own which would continue to be its own. We know that in point of fact that was done, and that the *Medical* fund was created in the way indicated by this circular.

That being the contract between the *Albert* and the *Medical*, and that being the circular issued to the German policy-holders, it appears that it was a great object with the companies in *London*, both the *Albert* and the *Medical*, to induce the German policy-holders, among others, to comply with the invitation to substitute for their subsisting policies in the *Medical* other policies to be issued by the *Albert*. And in order to effect that, a very judicious course was taken. Mr. *Singer*, by letter of 25 October, 1860, to Mr. *Varrentrapp*, after stating the different particulars about the circulars to be issued to policy-holders, says :

The necessary expense of exchanging the policies will be borne by the company [the *Albert*]; and as there will be considerably increased labour in carrying this exchange into effect, it is proposed that you shall deduct a further commission of 2½ per cent. on the next annual premiums of all exchanged policies.

Therefore we start with this, that this was an exchange of policies contemplated and desired by the original resolutions ; and the policy-holders were not left to drift, either at their own option or by chance, into exchanging or not exchanging, as the accident might be ; but Mr. *Varrentrapp*, the head of the business in

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Germany, himself acquainted personally, more or less, with all the policy-holders, is supplied with a strong inducement to have the business done which ought to be done, to have exchanges actually made ; he is to have a further commission of $2\frac{1}{2}$ per cent. on the next premiums of all exchanged policies. We have, then, this motive supplied to Mr. *Varrentrapp* to get the exchanges made, and we have Mr. *Varrentrapp* put in a position which makes it natural that he will have a distinct recollection of his efforts to obtain the exchanges, how far those efforts were successful, and how far they were unsuccessful. That they were successful to a considerable extent is evident. Mr. *Varrentrapp* himself exchanged three policies in the *Medical* for policies in the *Albert*. Up to that point the matter stands entirely free from doubt or conflict of evidence.

But the written evidence does not terminate there, because we find that in the letters which are in evidence there was clearly some demur on the part of the German policy-holders to exchange. Mr. *Varrentrapp* appears to have anticipated even more than actually occurred, and to have written some letters, in which he took a gloomy view, to Mr. *Singer*. Mr. *Singer* writes to him on 18 December, 1860 :

I am glad to perceive that you do not anticipate much trouble with the majority of your policy-holders in the matter of exchange. A few importunate and crotchety individuals will naturally arise among so many, and for their information in general, and that of the *Lubeck Society* in particular, I inclose you extracts from the minutes of the special meetings of shareholders, by which they can perceive what liberal and ample provisions have been made for the policy-holders, who, so far as their interests are concerned, have nothing whatever to complain of. By exchanging their policies they have, in addition to the minor benefit of being allowed to go within thirty-three degrees of the equator without extra premium, a declaration of bonus in 1861,

and so on. At this time it was anticipated in *England*, in consequence of the general remarks of Mr. *Varrentrapp*, that there would be some persons who would make difficulties, who are called importunate and crotchety individuals. Lower down Mr. *Singer* says :

There is not any absolute necessity, as you will perceive on reference to the abstract of resolutions sent you, that all the policy-holders should exchange their policies ; this is only suggested and pressed upon them for their benefit ; if

they do not choose to do so, they are at liberty to keep their old policies in force ; but in no instance can any holder expect to have the return of the premiums paid by them, as the contracts entered into will be punctually and faithfully fulfilled. The amalgamation of the business of this society with the *Albert* has been effected in strict accordance with our deed of settlement, and under the advice of some of the best legal authorities in the land, so that everything has been done in a strictly legal and straightforward manner.

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He appeals, therefore, in justification of the proceeding, to the deed, and says that if persons did not choose to come into the arrangement and exchange their policies, they might keep their old policies in force, and in those cases the engagements would be met in a straightforward and honourable manner. I dwell upon this, because these matters are high and dry above all risk of controversy about parol evidence. We have, therefore, this important fact, that there were German policy-holders giving trouble and refusing to exchange ; and it was considered an object to have the exchange made as largely as possible. It was contemplated that some persons might persist in their refusal and retain their old policies, and that was looked upon as one of the events contemplated on the amalgamation of the two companies.

In that state of things I have to deal with Mr. *Buchner's* case. So far as he is concerned, his testimony is this, that he got the circular informing him of the arrangement, but that he absolutely refused to send in his policy to be exchanged or to be indorsed, and that he objected to have anything to do with the *Albert*, and insisted on retaining his policy in and his rights against the *Medical*. It was not considered desirable to cross-examine Mr. *Buchner*, and his testimony, as I read it, states, subject to anything that may throw light upon it, that which would establish the matter of fact, as he wishes to establish it, that he actually refused to have either an exchange of the policy or an indorsement. There are admitted facts, which corroborate what Mr. *Buchner* says. He was well known to Mr. *Varrentrapp* ; he was a townsman of Mr. *Varrentrapp*, at *Frankfort*. This matter was well known and canvassed among those who were resident in *Frankfort*, who took an interest in these companies. It is not suggested that Mr. *Varrentrapp* and Mr. *Buchner* had not communications on the subject ; it is almost impossible to conceive that they could have failed to have had communications on the subject. It was Mr.

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Varrentrapp's interest, and by what he did in other cases it appears that he knew and appreciated his interest, to get Mr. *Buchner* to exchange his policy, because he would get his further commission on the premium. They had communications. The result of the communications must have been either that Mr. *Buchner* professed himself willing or that he professed himself unwilling. If he professed himself willing, why did not an exchange take place? It took place in other cases. It is incredible to suppose if he was willing to exchange that the exchange should not have taken place. I should say that, stopping there, there is a strong presumption that, the exchange not having taken place *de facto*, it was because Mr. *Buchner* was unwilling that the exchange should take place at all, and he could have been so unwilling for one reason only, namely, that he did not desire to be a policy-holder in the *Albert*.

Therefore, resting on the facts in the case which are beyond controversy, and the affidavit of Mr. *Buchner*, I should say the evidence went a long way to shew that Mr. *Buchner's* statement is correct. Then I come to Mr. *Varrentrapp*. I do not know that Mr. *Varrentrapp* has any interest in stating the case otherwise than as it actually occurred. I cannot find any suggestion against his integrity. I have read the interrogatories and the answers. I have no doubt that an equity draftsman might except to the answers as insufficient, but I cannot say that I see any trace of a desire on the part of Mr. *Varrentrapp* to shrink from answering the questions as far as they were understood. I do not know that the answers carry the matter very much further than the affidavits did. Upon the affidavits, it is clear, unless you attribute wilful falsehood to Mr. *Varrentrapp*, that the definite impression on his mind, which he asserts under the sanction of an oath as a witness in the case, is that Mr. *Buchner* not only did not exchange, but on being asked declined positively and absolutely to do so, and that he was made aware of the resolution to which I have referred, which enabled him and any other policy-holders who so declined to exchange, to preserve their rights against the *Medical*. I take that to be the result of Mr. *Varrentrapp's* cross-examination as well as of his affidavits, and I do not see why I should discredit it. I have said I thought the case was carried a long way before

I came to Mr. *Varrentrapp's* testimony, and I think that his testimony is therefore corroborated greatly by other parts of the evidence in the case.

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I am, therefore, having to form a judgment on the question of fact, bound to come to the conclusion that Mr. *Buchner* is a policyholder in the *Medical*, who did decline to accept a substituted policy in the *Albert*, and who kept alive his claim in the *Medical*, knowingly and purposely paying for that end his premiums to the *Albert*. I therefore think he must rank against the *Medical*.

Solicitor for Mr. *Buchner* : Mr. *Beddall*.

Solicitors for *Medical* : Messrs. *Kendall & Congreve*.

BUCHNER'S
CASE.

Varrentrapp's interest, and by what he did appears that he knew and appreciated his intention to exchange his policy, because he was on a mission on the premium. They were the result of the communications my *Buchner* professed himself unwilling. If he professed

ead.

change take place? It took place. He did not receive an amalgamation through the same agent before and to suppose if he was willing to operate, she was unable to read the receipts, not have taken place. By the agent; she denied all knowledge of a strong presumption any.

de facto, it was been

change should take place. The Arbitrator on the 1st of January 1889, issued for one Mrs. *K. Clegg*, widow, to prove against the *Western* policy-holder issued to her by the *Western*, dated 7 October,

Therefore, on the 1st of January 1889, on the life of *Joseph Hill*, for £400, without controversy.

evidence. *Clegg* lived in *Oldham*. She had a son, Mr. *Charles Clegg*, is a solicitor in practice there, and agent there for the *Western*. The policy was effected through him as such agent. The renewal notices were sent to him as such agent. He received the premiums from his mother, and remitted them to the *Western*, deducting his commission.

In 1865 the *Western* was amalgamated with the *Albert*. The amalgamation circular of 14 July, 1865, was sent by the *Western* to Mr. *Clegg*, but no notice of the amalgamation was given to his mother. The first premium receipt after the amalgamation was a *Western* receipt, with the following words stamped on it:

Incorporated with the

ALBERT LIFE ASSURANCE COMPANY,
Waterloo Place, London.

After the amalgamation, Mr. *Clegg* remitted the premiums in pursuance of the directions in the renewal notices, which continued to come to him, to the manager of the *Manchester* branch of the *Albert*. In 1866, and subsequently, the forms of receipts were as follows:

ALBERT LIFE ASSURANCE COMPANY,
7, Waterloo Place, Pall Mall,

CLEGG'S CASE.

London, S.W.

Established 1838.

On the 14th day of November, 1866, the
policy for the renewal of policy mentioned in the
policy, the amount of which premium and
for which it is received are also mentioned
in margin.

S. P. BIDDER,
Manager,
Per J. BARLOW.

The receipts were handed by Mr. Clegg to his mother, and
she produced from her custody, but it was proved that she was
illiterate and a markswoman, and unable to read the receipts, and
that they were not read to her by Mr. Clegg, she being merely
told by him that they were the receipts for her premiums.

Mr. Clegg and his mother were examined before the Arbitrator.
Mr. Clegg proved that she could not read; that he did not com-
municate to her the amalgamation circular; that he never pointed
out to her any difference in the receipts; and that he never told
her there was a change in the office before the winding-up of the
Albert. Mrs. Clegg said she could not read at all. She knew the
Western was the name of the office. She never heard anything of
the *Albert* until her son asked her for the receipts and the papers.
She had the policy locked up in her box. She never heard of the
change in the company till then.

Mr. Clegg (Solicitor) was for the claimant.

Mr. Cracknall was for the *Western*.

Mr. Clegg submitted that there was no novation.

Mr. Cracknall:—The case is governed by *Lancaster's Case*
(No. 2) above. Knowledge of the change shewn on the face of
the documents must be imputed. Mr. Clegg must be taken to have
been his mother's agent. She does not profess to have acted for

CLEGG'S CASE. herself. The difficulty is, that she denies that she could read the documents which she had kept. It is a question of fact whether her inability to read exempts her from the consequences of what she had done.

A reply was not called for.

LORD CAIRNS:—I do not think I can impute to this claimant the intention of abandoning the security of the *Western* and accepting that of the *Albert*. The evidence is sufficient to bring me to the conclusion that she had not the slightest knowledge of the amalgamation. There is nothing to shew that the amalgamation circular came either to her or to any one acting for her as her agent, in the ordinary sense of the term. The liquidators, if they rely on the receipts, must in the first place shew that she, or some agent competent to act for her and bind her, had a knowledge of the circumstances.

Her claim must rank against the *Western*, and she must have her costs.

Solicitor for claimant: Mr. *Clegg*.

Solicitor for *Western*: Mr. *Manning*.

APPENDIX.

A.

ALBERT ARBITRATION ACT, 1871.

34 & 35 VICT. c. xxxi.

An Act to effect a Settlement of the Affairs of The Albert Life Assurance Company by Arbitration; and for other Purposes.

[25th May, 1871.]

WHEREAS the Albert Life Assurance Company, in this Act called the Albert Company, has a nominal capital of £500,000, divided into 25,000 shares of £20 each, on which sums varying from £3 to £20 per share have been paid up:

And whereas, by an order of His Honour the Vice-Chancellor James, made on the 17th day of September, 1869, the Albert Company was ordered to be wound up by the Court of Chancery:

And whereas the Albert Company, which was originally established on the 1st day of July, 1839, under the title of the Freemasons' and General Life Assurance Company, at divers times purchased on divers terms the assets and businesses (subject to the liabilities on policies, annuities, endowments, and otherwise) of the following companies; that is to say,

1. The Western Life Assurance Society, in this Act called the Western Company;
2. The Bank of London and National Provincial Insurance Association, in this Act called the Bank of London Company;
3. The Family Endowment Life Assurance and Annuity Society, in this Act called the Family Endowment Society;
4. The Medical, Invalid, and General Life Assurance Society, in this Act called the Medical and Invalid Company;
5. The National Guardian Assurance Society, in this Act called the National Guardian Company;
6. The Times Life Assurance and Guarantee Company, in this Act called the Times Company;
7. The Beacon Life and Fire Assurance Company, in this Act called the Beacon Company;

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8. The Kent Mutual Assurance Society, in this Act called the Kent Company ; and

9. The Indian Laudable Mutual Life Assurance Society, in this Act called the Indian Laudable Company ;

To each of which said selling companies the Albert Company, as one of the said terms gave a general indemnity against claims on policies, annuities, and endowments current at the time of the purchase :

And whereas the said Western Company had previous to the sale of its assets and business to the Albert Company purchased the business and assets, subject to the liabilities and with similar indemnities as aforesaid, of the following insurance companies ; that is to say, the Metropolitan Counties and General Life Assurance, Annuity, Loan, and Investment Society (which included the St. George Assurance Company and the London and Continental Assurance Company) and the Manchester and London Life Assurance Association :

And whereas the said Bank of London Company had previous to the sale of its assets and business to the Albert Company purchased the business and assets, subject to the liabilities and with similar indemnities as aforesaid, of the following insurance companies ; that is to say, the National Provincial Life Assurance Society, the Falcon Life Assurance Society, and Merchants' and Tradesman's Mutual Life Assurance Society, and the Anchor Assurance Company :

And whereas the Family Endowment Company had previous to the sale of its assets and liabilities to the Albert Company purchased the assets and business, subject to the liabilities and with a similar indemnity as aforesaid, of the Empire Assurance Company :

And whereas the said Medical and Invalid Company had previous to the sale of its assets and business to the Albert Company purchased the business and assets, subject to the liabilities and with a similar indemnity as aforesaid, of the New Oriental Life Assurance Company :

And whereas the result of the said sales was that the Albert Company at the date of its winding-up was and still is liable upon a large number of policies, annuities, and endowments, a portion of which had been originally issued or contracted for by each of the said selling insurance companies above named, and that each of the said selling insurance companies was and may be liable upon some portion of the said policies, annuities, and endowments :

And whereas all the said companies hereinbefore mentioned are in process of liquidation by the Court of Chancery, except the National Guardian Company, the Times Company, the Beacon Company, the Indian Laudable Company, the St. George Assurance Company, the London and Continental Assurance Company, the Merchant's and Tradesman's Mutual Life Assurance Society, the Empire Assurance Company, and the New Oriental Life Assurance Company :

And whereas the said Albert Company is wholly insolvent, and of the said other companies some are believed to be solvent and some insolvent, and some portion of the said claims on policies, annuities, and endowments may fall upon each of the said selling insurance companies :

And whereas, by reason of the indemnities aforesaid, such claims falling on the said selling companies respectively will give rise to claims over by the said selling companies respectively against the Albert Company :

And whereas, in these circumstances, divers disputes and questions have arisen

between the Albert Company and the said other companies and the holders of the said policies, annuities, and endowments :

And whereas no call has yet been made in the said several liquidations, except a call of £1 per share in the liquidation of the Western Life Assurance Company :

And whereas the policyholders, annuitants, endowment holders, and other creditors of the Albert and said other companies, except such of them as have claims on such of the said companies as are solvent, are in danger of losing a large portion of their claims on account of the insolvency of the Albert Company and of such of the said other companies as are insolvent, and the risks and costs of the liquidation of the Albert Company and of the said other companies :

And whereas it may be expedient that the liabilities of the Albert Company and of the said other companies, or some of them, on policies, annuities, and endowments, should not be disposed of as immediate claims in the ordinary course of liquidation, but should be met, subject to any necessary deductions, at maturity, and for this purpose that the insurance business of the Albert Company pending at the date of its liquidation should be carried on to its natural termination :

And whereas in the ordinary course of liquidation it would be impossible to obtain the assent of the creditors of the said several companies to any scheme of reconstruction or arrangement unless all the said companies were in liquidation, and all the creditors thereof respectively had finally proved their debts :

And whereas it is indispensable for the purpose of settling the aforesaid affairs and reconstructing the Albert Company, or arranging or finally winding up its affairs, that discretion should be placed in an arbitrator specially constituted for the purpose, to determine the rights and settle the affairs of the said companies and their creditors, and it is expedient to give power to such arbitrator, if he shall think fit, to settle a scheme for the reconstruction of the Albert Company, and to provide so far as possible for the satisfaction of its pending insurance liabilities in the natural course of maturing, and for the settlement of all matters and questions relating to the affairs of the said companies respectively, as fully and effectually as could be done by Act of Parliament :

And whereas the several purposes aforesaid cannot be effected without the authority of Parliament :

May it therefore please your Majesty that it may be enacted, and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same as follows ; (that is to say,)

1. This Act may be cited for all purposes as The Albert Life Assurance Company Arbitration Act, 1871.

2. In this Act—

"The Albert Company" means the Albert Life Assurance Company :

"The scheduled companies" means the several companies, associations, societies, or partnerships named in the schedule to this Act, whether legally constituted companies or not :

"The absorbed companies" means the several companies (if any) which have from time to time been directly or indirectly absorbed into or amalgamated or united with any of the scheduled companies :

"Creditor" includes policyholder, annuitant, or endowment holder, and a

APPENDIX A.

person claiming or alleged to be a creditor as a policyholder, annuitant, endowment holder, or otherwise :

“Shareholder” includes member, proprietor, or partner, and a person claiming or alleged to be a shareholder, member, proprietor, or partner of or in a company, association, society, or partnership :

“Contributory” includes a person claiming or alleged to be a contributory :

“Creditor,” “debtor,” “shareholder,” and “contributory” respectively include the heirs, executors, administrators, successors, and assigns of a creditor, debtor, shareholder, or contributory :

“Person” includes corporation or body :

“Liability” includes policy, annuity, or endowment, and any liability, present, future, liquidated, contingent, or other, on or in respect of a policy, annuity, or endowment.

3. For the purpose of determining the matters by this Act referred to arbitration, the Right Honourable Hugh MacCalmont Baron Cairns is hereby appointed the arbitrator.

4. The matters by this Act referred to arbitration are the following :

- (a.) The relative rights, liabilities, and interests of the several scheduled and absorbed companies on the one hand, and of their respective creditors, debtors, shareholders, and contributories on the other hand :
- (b.) The relative rights, liabilities, and interests of the several scheduled and absorbed companies as between each other :
- (c.) The claims of the several scheduled and absorbed companies, or their respective creditors, shareholders, and contributories, against any person, and of any person against those several companies in respect of any payment made or anything done or omitted by or on behalf of any of those companies, or by any person in relation to the affairs of any of those companies :
- (d.) All matters in question as between all parties, in all liquidations of any of the several scheduled and absorbed companies, and in all suits, actions, and proceedings relating to the affairs of those several companies, and every such liquidation, suit, action, and proceeding :
- (e.) Any claims and matters in question between any present or former shareholder of any of the several scheduled and absorbed companies, and any trustees, directors, or officers of such companies respectively, in respect of any misfeasance, nonfeasance, misappropriation, or otherwise :
- (f.) Generally the winding-up and final settlement of the affairs of the several scheduled and absorbed companies.

5. The arbitrator may, if he thinks fit, settle and award a scheme or schemes for the arrangement, compromise, and final settlement of all or any part or parts of the affairs of the several scheduled and absorbed companies, or any or either of them, and of all or any of the matters by this Act referred to arbitration, and any such scheme or schemes may provide for the matters aforesaid, or any of them, in either of the forms following :

- (a.) In the form of a reconstruction or reconstitution of the Albert Company, with or without modification, or the incorporation, by registration or

ALBERT ARBITRATION ACT.

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otherwise, of that company, or the constitution of another company, with, in either of those cases, provisions for the continuance and conduct of all or any branch or part of the insurance and other business of the Albert Company, current at the commencement of its liquidation, to the natural termination of that business, or otherwise;

- (b.) In the form of a transfer, total or partial, of that business to another company or other companies existing or to be constituted under the directions of any scheme or schemes, or otherwise;

or in any such other form or manner as the arbitrator, in his absolute and unfettered discretion, thinks expedient, and any of such forms adopted may be with or without the payment of surrender values, in all cases in which the arbitrator thinks the same equitable or expedient.

6. The arbitrator shall have power for the purposes of any scheme, or any other purpose of the arbitration, to do all or any of the following things; namely,

- (1.) To value and estimate any liabilities or claims, whether present, future, liquidated, contingent, or other:
- (2.) To direct the winding-up of any of the scheduled or absorbed companies not in liquidation, in any case in which the Court of Chancery might, in the opinion of the arbitrator, order the same, or in any such case to deal with them, or any of them, as if they were in liquidation:
- (3.) To direct such contributions and payments to be made, and in such manner and by such persons or classes of persons and companies as he may think equitable and expedient:
- (4.) To make such deductions, present or future, fixed or contingent, from liabilities or claims, and establish such funds, securities, guarantees, trusts, and powers, as appear to him expedient and equitable:
- (5.) To take the advice and opinion of actuaries, surveyors, and other experts, and to adopt and act on any such advice or opinion, if and so far as he may think fit.

7. All trustees, executors, and administrators, trustees and assignees in bankruptcy, trustees and inspectors under deeds of arrangement or composition, liquidators and corporations holding or being entitled to or interested in (on any trust or otherwise) any policy, annuity, or endowment granted by any of the scheduled or absorbed companies, and all guardians and committees of infants and lunatics holding or being entitled to or interested in any such policy, annuity, or endowment, may, for the purposes of any scheme and any other purpose of the arbitration, exercise all powers of consenting, voting, appointing proxies, accepting substituted policies, annuities, and endowments, and submitting to the reduction of the amount of policies, annuities, and endowments, and generally all powers and discretions that would have been exercisable by them for the purposes of any scheme or any other purpose of the arbitration if they had been individuals entitled in their own right and not under disability, and they shall be by virtue of this Act indemnified in respect thereof; and every substituted or reduced policy, annuity, or endowment shall be by virtue of this Act subject and liable to the same trusts and charges as affect the policy, annuity, or endowment for or from which the same is substituted or reduced, and the same shall by virtue of this Act vest and pass so as to give effect to and not revoke any settlement or testa-

mentary or other disposition of or affecting the policy, annuity, or endowment for or from which the same is substituted or reduced ; and the arbitrator may give such directions as he thinks just and expedient for the better execution of this section.

8. All trustees, executors, and administrators, trustees and assignees in bankruptcy, trustees and inspectors under deeds of arrangement or composition, liquidators and corporations holding or being entitled to or interested in any share or interest in the capital of the Albert Company, and all guardians and committees of infants and lunatics holding or being entitled to or interested in any such share or interest, shall accept any share or interest allotted to them in lieu thereof under any scheme under this Act, or otherwise by direction of the arbitrator ; and any share or interest so allotted shall, by virtue of this Act, vest and pass so as to give effect to and not revoke any settlement or testamentary or other disposition of or affecting the share or interest in lieu of which it is allotted ; and the arbitrator may give such directions as he thinks just and expedient for the better execution of this section.

9. The arbitrator shall have power for the purposes of any scheme, or any other purpose of the arbitration, to get in, or direct the getting in, and to apply or distribute, or direct the application or distribution of, or to otherwise deal with all or any part of the assets of any of the several scheduled or absorbed companies, including, if he shall think the same to be just, any guarantee fund, indemnity fund, or other special fund belonging to, held in trust for, or established for any purpose of or relating to any of those companies ; and all matters in question as between all parties to any suit pending at the passing of this Act relating to any such fund as aforesaid, and every such suit, shall be comprised among the matters by this Act referred to arbitration.

10. With respect to the authority and jurisdiction of the arbitrator generally, the following provisions shall have effect ; (namely,)

- (1.) The arbitrator, in addition to the powers and authorities which an arbitrator appointed by consent of parties, or by order of a Court or of a Judge, has at common law or by statute or otherwise, and in addition to the powers and authorities expressly given to him by this Act, shall have all the powers, authorities, and jurisdiction vested in or exercisable by the Court of Chancery, or a Judge thereof in Court or at Chambers, in the liquidations of any of the scheduled companies pending at the passing of this Act, and all such powers, authorities, and jurisdiction as would have been vested in or exercisable by the Court of Chancery, or a Judge thereof in Court or at Chambers, if all the scheduled and absorbed companies had been in liquidation in the Court of Chancery at the passing of this Act :
- (2.) The arbitrator may make all such orders and do all such acts and things as the Court of Chancery, or a Judge thereof in Court or at Chambers, might have made or done in any such liquidation as aforesaid :
- (3.) Every order, act, and thing so made and done by the arbitrator shall have to all intents the like effect as if it had been made or done by the Court of Chancery, or a Judge thereof in Court or at Chambers, and shall be executed and enforced by all sheriffs and other officers and persons accordingly :

- (4.) The arbitrator shall have the like power of appointing an official liquidator or official liquidators for the purposes of any such liquidation as aforesaid as the Court of Chancery has or would have; and an official liquidator appointed by the arbitrator shall have the like powers and authorities, subject to the like restrictions, as an official liquidator appointed by the Court of Chancery :
 - (5.) For the purposes of this Act, Parts IV. and IX. of the Companies Act, 1862 (relating respectively to winding up and to unregistered companies), and all provisions of that Act relative thereto, and all enactments amending those parts and provisions, shall have effect as if throughout those parts, provisions, and enactments the arbitrator were mentioned instead of the Court of Chancery or a Judge thereof :
 - (6.) The jurisdiction of the arbitrator shall extend to India, and all other parts of Her Majesty's dominions, and the arbitrator shall have all the powers, authorities, and jurisdiction vested in or exercisable by any Court in India, or in any other part of Her Majesty's dominions, in respect of the affairs of any of the scheduled and absorbed companies, or of any of the matters by this Act referred to arbitration ;
- and nothing in this Act shall be construed as restricting the generality of this section.

11. The arbitrator may settle and determine the matters by this Act referred to arbitration, not only in accordance with the legal or equitable rights of the parties as recognised in the Courts of Law or Equity, but upon such terms and in such manner in all respects as he in his absolute and unfettered discretion may think most fit, equitable, and expedient, and as fully and effectually as could be done by Act of Parliament.

12. Any liquidation, suit, action, or proceeding which at the passing of this Act is pending in or under appeal from any Court of Law or Equity in respect of any of the matters by this Act referred to arbitration shall not be carried on after the passing of this Act otherwise than before the arbitrator, except with the leave of the arbitrator, and subject to such terms and conditions as he may impose.

13. No suit, action, or proceeding shall, after the passing of this Act, and pending the arbitration, be instituted, brought, or taken in respect of any of the matters by this Act referred to arbitration, except by the direction of the arbitrator, and subject to such terms and conditions as he may impose.

14. All money and securities under the control of the Court of Chancery in any of the liquidations of any of the scheduled companies pending at the passing of this Act, or of any of the liquidators therein, and all books, papers, and documents relating to any of those liquidations in the possession, custody, or control of any of the liquidators therein, shall on the passing of this Act be paid and delivered up to the arbitrator, or as he directs.

15. The liquidators of such of the several scheduled companies as are in liquidation shall take such steps and proceedings and do all such things, in the Court of Chancery or elsewhere, with reference to the matters by this Act referred to arbitration, as the arbitrator directs.

16. The arbitrator may allow or direct any proceeding pending at the passing of this Act to proceed to judgment or such other stage as he may think fit, and may direct any new proceeding to be taken and to proceed to judgment or such other stage as he may think fit.

17. The arbitrator may in his discretion adopt any judgment, verdict, decree, order, or certificate made in any proceeding pending at the passing of this Act, or directed or allowed by him to be taken, and may adopt and avail himself of any such proceeding, and of any evidence taken therein, as he may think fit, and may make any award or order in pursuance either wholly or partially of any such judgment, verdict, decree, order, certificate, or proceeding, or may award or order that any proceeding be carried on as if this Act had not been passed, and may make his final award without awaiting the termination of the proceeding.

18. The arbitrator may make and vary such general rules, regulations, and orders as he may from time to time think fit as to parties, mode of procedure, notices, evidence, or costs.

19. The arbitrator may from time to time make any certificate, award, order, or other instrument touching any one or more of the questions, matters, or things before him, and may by any subsequent certificate, award, order, or other instrument supplement or vary any previous certificate, award, order, or other instrument, and shall, within one year after the passing of this Act, or within such extended period as he shall by writing under his hand from time to time appoint for that purpose, make a final award for the settlement of all matters by this Act referred to arbitration.

20. All awards, orders, certificates, or other instruments made by or proceeding from the arbitrator shall be sufficiently authenticated if under his hand, and may be in writing or print, or partly in writing and partly in print, and all Courts shall take judicial notice of his signature; and any notice issued by the arbitrator, or any award, order, certificate, or other instrument made by or proceeding from him, shall, if he so directs, be published in the London Gazette or in any other official gazette or like publication published in any part of Her Majesty's dominions.

21. All awards, orders, certificates, or other instruments made by or proceeding from the arbitrator shall be binding and conclusive on all parties to all intents and purposes whatsoever, and shall not be removed or removable by certiorari, or by other writ or process into any of Her Majesty's Courts of Law or Equity, and the proceedings or acts of the arbitrator shall not be liable to be interfered with by any Court of Law or Equity by way of mandamus, prohibition, injunction, or otherwise, and no such award, order, certificate, or other instrument shall be set aside for any irregularity or informality, or by reason of any matter referred being left undecided, and no such award, order, certificate, or other instrument shall be subject to review or appeal, or be liable to be questioned on any ground before or after the making of the final award in any Court of Law or Equity, or elsewhere, by any proceeding against any of the scheduled or absorbed companies, or against the arbitrator or otherwise.

22. Applications to the arbitrator shall be made in such manner and form, and shall be heard and disposed of on the attendance of or notice to such parties or

persons chosen as representatives of such parties on such written or other statements and on such evidence, as the arbitrator, by general regulations or otherwise, may from time to time direct, and the costs of any such applications, and of all proceedings before the arbitrator, or under his authority or otherwise, under this Act, shall be in the discretion of the arbitrator, who may direct to or by whom or out of what fund the same shall be paid, and the opinion or decision of the arbitrator on any such application or with respect to the costs thereof, or on any matter or thing within his jurisdiction, shall not be subject to review or appeal, and the amount of such costs may be ascertained by the arbitrator, or by taxation in the Court of Chancery, or otherwise, as he directs.

23. All awards made in pursuance of this Act shall be enrolled in the High Court of Chancery within three months after the execution thereof; and a copy of any such award certified by the proper officer of the enrolment office of the Court, or a copy of any such award printed by the Queen's printers, shall be evidence of the contents of the award, and that it was duly made, and that all the requisitions of this Act in relation thereto were complied with, and notice of the making of every such award shall be given in the *London Gazette*.

24. All awards made by the arbitrator shall from the date thereof respectively be effectual to all intents and purposes, and binding upon all corporations and persons whomsoever without appeal, and shall have the like effect as if the same had been enacted by Parliament.

25. The arbitrator may appoint and employ any assessor, examiner, secretary, and clerks, and other officers, for the purposes of this Act, and fix their remuneration, and determine and direct out of what funds the same shall be paid.

26. The arbitrator may direct the ascertainment and payment in such manner and to such extent as he thinks fit of all or any part of the expenses incurred by or on behalf of the committee of policyholders, shareholders, and annuitants of the Albert Company, and four other scheduled companies, in or in relation to the discharge and exercise of the duties and powers of that committee.

27. The arbitrator may refer for taxation to one of the taxing masters of the Court of Chancery all bills of costs and accounts of allowances and remuneration and other charges of solicitors, liquidators, and others claimed against any of the scheduled companies, or any of their shareholders or contributories, in respect of the liquidation of any of those companies, or otherwise in respect of any matter pending at the passing of this Act in relation to those companies, or any of them, and the taxing master to whom the same are referred shall (subject to any directions of the arbitrator) tax those bills and accounts as if they had been referred for taxation by the Court of Chancery, and shall report on the same to the arbitrator, if so required by him.

28. The expenses of the arbitration (including a sum of not less than two thousand pounds to the arbitrator for his personal trouble) shall be determined by the arbitrator, and paid in such manner as he shall direct.

29. If the arbitrator dies, resigns, or from any cause becomes incapable of acting or unwilling to act, an arbitrator shall be appointed in his place by the

APPENDIX A.

Lord High Chancellor of England for the time being, such last-mentioned arbitrator being a person who shall fill or have filled the office of a Judge of one of the superior Courts of Law or Equity in the United Kingdom, or is a member of the Judicial Committee of the Privy Council, and the provisions of this Act relating to the arbitrator shall extend to any person so appointed, and this section shall be put in force from time to time as occasion may require.

30. All costs, charges, and expenses preliminary to and of and incident to the preparing of, applying for, obtaining, and passing of this Act shall be paid out of such funds, at such times, and in such manner as the arbitrator shall direct.

The SCHEDULE before referred to.

The Albert Life Assurance Company.
The Western Life Assurance Society.
The Bank of London and National Provincial Insurance Association.
The Family Endowment Life Assurance and Annuity Society.
The Medical, Invalid, and General Life Assurance Society.
The National Guardian Assurance Society.
The Times Life Assurance and Guarantee Company.
The Beacon Life and Fire Assurance Company.
The Kent Mutual Assurance Society.
The Indian Laudable Mutual Life Assurance Society.
The Metropolitan Counties and General Life Assurance, Annuity, Loan, and Investment Society.
The St. George Assurance Company.
The London and Continental Assurance Company.
The Manchester and London Life Assurance Association.
The National Provincial Life Assurance Society.
The Merchant's and Tradesman's Mutual Life Assurance Society.
The Anchor Assurance Company.
The Falcon Life Assurance Society.
The Empire Assurance Company.
The New Oriental Life Assurance Company.

B.

ALBERT DEED OF SETTLEMENT.

THIS INDENTURE made the 1st day of July in the year of our Lord 1839 between Swynfen Jervis of . . . Henry Urmston Thomson of . . . and Ralph Fenwick of . . . of the 1st part the said Swynfen Jervis William Day of . . . Frederick Christopher Dodsworth of . . . the said Ralph Fenwick Joseph Holl of . . . James Jephson of . . . William King of . . . George Goldsmith Kirby of . . . Lawrence Kortright of . . . Richard Alexander Price of . . . and Charles Roberts of . . . of the 2nd part and the several other persons whose names are hereunto subscribed and seals affixed of the 3rd part :

Whereas the several persons parties to these presents have agreed to form themselves into a company or co-partnership in order to effect the objects and transact the business hereinafter expressed and for such purposes to raise a capital of £500000 divided into 25000 shares of £20 each :

* * * * *

NOW THIS INDENTURE WITNESSETH that for the purpose of more effectually establishing the said company each and every of the said several persons parties to these presents of the 2nd and 3rd parts respectively (so far as relates to the acts and deeds of himself and herself respectively and his and her respective heirs executors and administrators but not further or otherwise) Doth hereby for himself and herself respectively and for his and her respective heirs executors and administrators covenant with the several persons parties to these presents of the 1st part jointly their executors and administrators and with each and every of them severally and respectively and their several and respective executors and administrators And each and every of the said several persons parties to these presents of the 1st part (so far as relates to the acts and deeds of himself his heirs executors and administrators but not further or otherwise) Doth hereby for himself his heirs executors and administrators covenant with the several persons parties to these presents of the 2nd part their executors and administrators and with each and every of them severally and respectively and their several and respective executors and administrators in the manner following (that is to say) :

That the several persons parties to these presents (all of whom are hereinafter distinguished by the title of proprietors) and the several other persons who shall become proprietors as hereinafter is mentioned shall while holding shares in the capital of the company be and continue (until dissolved under the provisions hereinafter in that behalf contained) a company or co-partnership under the style of The Freemasons and General Life Assurance Loan Annuity and Reversionary Interest Company :

That the objects and business of the company shall be to effect assurances on the life or lives of any person or persons whomsoever and on any survivorship or survivorships and to make effect or grant all such other assurances connected with life as may be effected according to law and to grant and sell and purchase annuities either for lives or years and on survivorships and either immediate

deferred reversionary or contingent and to sell or provide endowments for widows children and other persons and to grant sell and purchase life interests either in possession or reversion and also reversions remainders expectancies and other interests not in possession whether vested or contingent absolute or defeasible and whether the same or any of them are to take effect or come into possession upon the determination or dropping of any one or more life or lives or on the expiration of any term or number of years or on any other event whatever and whether such reversionary or other interests be in freehold copyhold customary or leasehold estates or property or in personal property of any description and generally to transact and negotiate all other business whatever which may be in any way connected with or depending on the contingencies of human life or usually transacted or negotiated by life assurance offices or by offices established for the purchase of reversionary or other interests And also to purchase and re-sell freehold property of any description whether corporeal or incorporeal And also copyhold and leasehold property And also other personal property whether of the nature of realty or otherwise :

That the capital of the company shall consist of the sum of Five hundred thousand pounds divided into 25000 shares of Twenty pounds each and of such further sums as shall from time to time be raised by the creation and sale of new shares under the power for that purpose hereinafter contained :

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That all policies granted or agreed for previously hereto and all contracts engagements and agreements heretofore entered into by the said parties hereto of the 1st and 2nd parts or any or either of them with any person or persons whomsoever for or on the behalf of or for the purpose of furthering the objects of the company shall as between the said parties hereto of the 1st and 2nd parts and the several other persons parties hereto be as binding and conclusive upon all the proprietors of the company in all respects and to all intents and purposes as if the same had been signed by each and every proprietor and the said parties hereto of the 1st and 2nd parts their executors and administrators shall be indemnified out of the funds and property of the company from all liabilities in respect thereof :

* * * * *

That the affairs of the company shall be conducted and managed under and subject to the several rules and regulations hereinafter contained (that is to say)—

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21. That a majority of two-thirds of the proprietors present at any special general meeting or if a poll shall be demanded a majority of two-thirds of the number of votes given at such poll shall be requisite to decide any question relating to the reduction of the amount and addition to the number of shares in the capital of the company or to the increase of the capital of the company by the creation and issue of new or additional shares or to the removal from his office of any director or auditor of the company or to the increasing or diminishing the number of directors or to the amending altering or repealing any of the clauses or provisions of this deed or any of the existing laws and provisions of the company or to the dissolution of the company :

Provided always that if such question shall relate to the dissolution of the company. . . .

22. That as to all questions relating to any other business or matter to be trans-

acted at any annual or special general meeting a mere majority of the proprietors present at such meeting and qualified to vote or if a poll shall be demanded of the number of votes given at such poll shall be sufficient to decide the same.

30. That it shall be lawful for a special general meeting called for the purpose from time to time to amend alter or repeal either wholly or in part all or any of the clauses or provisions of this deed or of the existing laws rules and regulations or provisions of the company and to make any new or other laws rules and regulations or provisions in lieu thereof or in addition thereto and such new laws rules and regulations or provisions and such amendments alterations or repeal if confirmed by a subsequent special general meeting to be convened for the purpose at the distance of not less than two weeks nor greater than four weeks from such preceding general meeting shall in such case but not till then be binding and conclusive upon the proprietors :

Provided always that such new amended or altered laws rules and regulations or provisions do not at any time or under any circumstances extend to repeal or alter the principle established and settled by these presents that the individual responsibility of each proprietor shall as between himself or herself and his and her co-proprietors be confined to the amount of his or her share or shares in the capital thereof for the time being or to repeal or alter the provision hereinafter contained relative to the dissolution of the company or to repeal or alter the appointment hereby made of the first directors of the said company or their remuneration or the appointment hereby made of the first managing director of the said company or his remuneration and privileges.

54. That the said George Goldsmith Kirby the original projector of the said company shall be the first managing director of the said company and shall be and is hereby constituted such for the term of his natural life for all the purposes of the said company and not for any local district or place merely and shall receive from time to time out of the funds of the said company the annual sum of £400 and also the sum of £5 per cent. upon all the premiums which shall during the time he shall continue such managing director be received by the said company on assurances effected with the said company and shall also be permitted by the said company to use and occupy as the private residence of himself and family and as offices for the carrying on of his private professional business such part of the messuage and premises in Waterloo Place aforesaid with the appurtenances wherein the business of the said company is now carried on as shall not be required for the purposes of the said company rent free and without contributing towards the expense of taxes or repairs and shall also be fully indemnified by the said company from and against all actions suits costs losses damages or expenses in respect of the rent or the covenants and conditions respectively reserved and contained in the indenture of lease under which the same premises are now held and shall also be permitted by the said company to carry on and conduct so long as he may think proper the business or profession now carried on by him on his own account and for his own emolument and shall during the time he shall continue managing director as aforesaid have the conduct and management of all the legal business of the said company and be allowed all professional charges for his time and trouble in or about such business which he not being such managing director as aforesaid would be entitled to make if employed by the said company therein.

55. That (subject and without prejudice to the appointment lastly hereinbefore contained of the first managing director of the said company and his remuneration and privileges) it shall be lawful for the board of directors at any time or from time to time to nominate and appoint a managing director or managing directors and to delegate to such managing director or directors or to any person by any other name or title all and every or any such powers and authorities (except as hereinafter mentioned) as the board of directors shall in their discretion think fit and from time to time or at any time to rescind suspend or curtail all and every or any of the powers which may be so delegated and to allow him or them out of the funds or property of the company such compensation for his or their time and trouble as the board of directors shall think fit.

60. That the board of directors may also from time to time appoint remove and again appoint the bankers of the company and likewise all medical officers one or more secretary or secretaries and likewise an actuary and may likewise appoint such and so many clerks cashiers bookkeepers messengers and other officers and servants (not hereinbefore provided for) and impose on them such duties as the board may think proper and all such officers clerks and servants respectively to be appointed under this power shall be removable at the pleasure of the board.

61. That it shall be lawful for the board of directors to allow all such officers clerks and servants of the company such salaries and other emoluments and at their pleasure to dispense with any security or to require them to give to some one or more of the trustees or directors of the company such security for their good conduct while in the employ of the company as the board shall think fit.

62. That it shall be lawful for the board of directors from time to time to appoint agents for the company in such places and with such salaries or commission as the board shall think proper and to remove such agents at pleasure and to appoint others in their room and to empower such agents to receive monies and to transact business on behalf of the company under such regulations and restrictions as shall be determined upon by the board.

63. That the board of directors shall be at liberty to allow such commission as they may think proper to attorneys solicitors and others whether proprietors or not on their effecting assurances with or paying premiums to the company.

64. That it shall be wholly left to the discretion of the board of directors or to such committees or to such persons as they may appoint for that purpose to accept or refuse proposals for assurance to be effected with and for annuities to be granted by the company.

65. That all assurances which shall be effected with and all annuities which shall be granted by or to the company shall be effected and granted at such rates and upon such terms and conditions as the board of directors may think proper.

66. That it shall be lawful for the board of directors to effect assurances upon the lives of persons wherever resident and to grant permission to persons upon whose lives assurances may have been effected by the company to go to return from or reside in any part of the world upon such terms and conditions and upon the payment of such premiums as the board shall think proper and also to insure the lives of persons below the ordinary standard of health at such terms and upon the payment of such premiums as the directors may determine.

67. That it shall be lawful for the board of directors to make assurances at a

reduced rate of premium in cases where the parties assured shall agree to waive their right to participate in the profits of the company.

68. That the limit of the sum to be assured on any one life either for the whole continuance thereof or for any less period or against any other life or lives or any other event shall be wholly left to the discretion of the board of directors.

69. That the board of directors shall cause every policy by which an assurance shall be effected with the company and every deed by which an annuity shall be granted by the company to be executed by three of the directors or by such officer of the company as they may think proper by a vote of the board to authorize and the directors or other persons executing the policy or instruments granting the annuities shall be indemnified out of the funds or property of the company from all liabilities or consequences thereof.

70. That the board of directors shall cause it to be stated in every policy by which an assurance may be effected with the company and in every deed by which an annuity may be granted by the company that the subscribed capital of £500000 sterling and other the stock funds and securities and property of the company which at the time of any claims or demands made in respect of such policy or annuity shall remain unapplied and undisposed of in pursuance of the trusts powers and authorities contained in these presents shall alone be liable to make good all claims and demands upon the company in respect of such policy or annuity.

71. That the premiums payable in respect of assurances effected with or engagements entered into by the company may at the discretion of the board of directors be paid either yearly half-yearly or quarterly or at any other periods either greater or less than a year or in a single payment or by equal annual payments for a limited number of years or by decreasing or increasing payments.

72. That it shall be lawful for the board of directors if they shall think proper so to do but not otherwise upon the application of any person proposing to effect or entitled to the benefit of an assurance effected with or engagement entered into by the company to vary and change the times and manner at or in which the premiums in respect of such assurance or engagements may be payable and to allow a portion or portions not exceeding one moiety of the premium or premiums for all or any of the first five years of any assurance or assurances effected or to be effected with the said company to remain at interest in the hands of the person or persons for the time being entitled to the benefit of such assurance on the security of the policy or policies of assurance or to defer or suspend the payment of any such portion or portions for such period and on such terms as the board of directors shall think reasonable.

73. That it shall be lawful for the board of directors if they shall think proper so to do but not otherwise to revive any policy of assurance that may from any cause whatsoever have been forfeited or become void upon the payment of such fines and upon such terms and conditions and within such period not exceeding twelve calendar months from the time of its having been forfeited or become void as they shall think proper.

74. That if any person entitled to the benefit of any insurance effected with the company shall be desirous of surrendering his or her policy or of disposing of his or her interest therein or of the additions which may have been made thereto it

shall be lawful for the board of directors to purchase the same at such value as they may think fair and reasonable.

75. That in case any person entitled to the benefit of any assurance effected with the company shall be desirous of discontinuing the payment of the premium in respect thereof it shall be lawful for the board of directors on the surrender of the policy by which such assurance was effected to grant a new policy free from the payment of any further premium for a sum to be agreed upon payable at the dropping of the life assured or the happening of the contingency or as the case may be for the payment of an annuity of a diminished amount and the person to whom such new policy shall be granted shall not (unless otherwise agreed) be precluded from participating in the profits of the company if the former policy shall have entitled him to participate therein.

76. That when and so often as any person entitled to the benefit of any assurance effected with the company and who shall have paid a sum equal to three years' annual premium in respect thereof shall be desirous of raising money on his or her policy it shall be lawful for the board of directors if they in their discretion think fit so to do but not otherwise to advance to such person on the security of his or her policy either by the way of loan generally or in payment or satisfaction specifically of any premium or premiums due or to become due in respect of such policy and upon such terms and conditions as the board of directors shall from time to time think proper any sum or sums of money not exceeding in the whole the value of the policy upon which the same shall be secured such value to be determined by or under the authority of the board of directors.

77. That it shall be lawful for the board of directors to redeem or repurchase any annuity granted by the company upon such terms as to the board of directors shall seem reasonable.

79. That it shall be lawful for the said board of directors if they shall at any time think it advisable so to do to effect an insurance or insurances in any other office or offices upon any life or lives in which the company may happen to have an insurable interest upon such terms and conditions as may be agreed upon between the said board of directors and such office or offices.

81. That the board of directors shall form four several funds to be called The Proprietors' Fund The First Assurance Fund The Second Assurance Fund and The Masonic Benevolent Fund and shall keep separate and distinct accounts of the said several funds and of the additions and disbursements which shall from time to time be made to and out of the same funds respectively :

And The Proprietors' Fund shall be composed of the sums paid by the proprietors as instalments upon or in respect of the shares taken or held by them in the capital of the company and of the additions to be made to such funds from time to time as hereinafter mentioned and of the increase thereof respectively from time to time by accumulation or otherwise :

And The First Assurance Fund shall be composed of the premiums and other the sums received and to be received for or on account of such assurances effected and to be effected with the company as shall not entitle the assured to participate in the profits of the company and of the premiums and other the sums received and to be received in respect of endowments effected with the company for widows or children or other persons and also of the sums received and to be received in respect of the sale of annuities granted by the company and of all fines and other

sums paid for non-appearance in respect of or for the renewal of any policy not conferring a right to participate in the profits of the company and of the increase thereof respectively from time to time by accumulations or otherwise :

And The Second Assurance Fund shall be composed of the premiums and other the sums received and to be received for or on account of such assurances effected and to be effected with the company as shall entitle the assured to participate in the profits of the company and of all fines and other sums paid for non-appearance in respect of or for the renewal of any policy conferring a right to participate in the profits of the company and of the increase of such premiums and other sums respectively from time to time by accumulation or otherwise :

And The Masonic Benevolent Fund shall be composed of such tenth or other share of the profits arising from the two funds called The First Assurance Fund and The Second Assurance Fund as in pursuance of the directions hereinafter contained shall be set aside and appropriated in order to form or increase such fund.

97. That if at any time any sum or sums of money shall be wanted for the purposes of the company it shall be lawful for the directors if they shall think it expedient so to do instead of raising the same by calling for any further instalment to borrow and take up the same at interest either from the proprietors in which case each proprietor shall be entitled to contribute in proportion to the number of his shares in the capital of the company or from any person or persons who may be willing to lend or advance the same and to give security for the payment thereof by mortgage of the freehold or leasehold or other property of the company :

Provided always that the directors in case they shall think it expedient to borrow such sum or sums in the name and on the behalf of the company in any other manner than from the proprietors thereof shall at the next general meeting if the same shall be held within the space of four calendar months next thereafter and if not then at a special general meeting to be called for such purpose within the space of four calendar months report to such meeting the sum or sums which shall be so borrowed and the nature of the security which shall have been given for the same and the reasons which actuated the directors to pursue such a course :

Provided further that the sum or sums of money which may be borrowed and taken up at interest by the directors in the name or on behalf or for the purposes of the company under the authority of this provision in any other manner than from the proprietors of the said company shall not including any money which may have been previously borrowed and which shall be then unpaid exceed in the whole at any one time the sum of £20000.

98. That as to the money and property constituting The Proprietors' Fund and as to so much and such part of the monies and property constituting The First Assurance Fund and The Second Assurance Fund as shall not be required to satisfy immediate claims upon the company or upon the said funds respectively the board of directors shall accumulate the same respectively at compound interest and shall for that purpose lay out and invest the same in or upon any of the parliamentary stocks or public funds or any government securities of the United Kingdom or in bank stock South sea stock East India stock or India bonds or on real securities in the United Kingdom or elsewhere whether freehold copyhold customaryhold or

leasehold or upon any securities under the seal of any corporate body or chartered company or upon the security of any docks canals navigations waterworks bridges turnpikes roads railroads or parochial or other rates made chargeable by any Act of Parliament or in the purchase of annuities for one or more life or lives or of any other description or in the purchase of life interests or present future or reversionary interests in any property real or personal or in the purchase of any freehold copyhold customaryhold or leasehold property or on the security by way of mortgage of any policy of assurance effected with the company or with any other company or society for the whole period of life either with or without any collateral or other security whatever so that the sum or the amount of the sums to be lent on the security of any such policy do not exceed the value thereof according to the tables of the company or the said directors may if they shall think proper place such sum or sums of money at interest with any banker broker or other person or company upon such security and at such rate as they may think right and the board of directors may when and as they shall think proper so to do cause any of the funds which may be so laid out and invested or any other property of the company to be disposed of called in or otherwise converted into money and the money arising thereby to be again laid out and invested in any of the ways hereinbefore mentioned and so from time to time as occasion may require :

Provided nevertheless that in every investment care shall be taken so to dispose of the funds or property of the company as that sufficient money may at all times be raised without difficulty whenever the same shall be required to satisfy the current claims upon and the expenses of the company.

102. That whenever the holder for the time being of any share or shares in the capital of the company whether such holder shall be a proprietor or the husband of a female proprietor or the executor or administrator of a deceased proprietor or the assignee of a bankrupt or insolvent proprietor shall be desirous of selling or disposing of any one or more of such share or shares and shall apply to the directors to purchase the same it shall be lawful for the directors if they shall think proper so to do but not otherwise with or out of The Proprietors' Fund to purchase at such price as they shall deem fair and reasonable the share or all or any of the shares which the holder making application shall be desirous of selling.

103. That all such shares as shall at any time hereafter be purchased by the directors under the power or authority hereinbefore contained (and which power and authority has been confided to them not for the purpose of enabling them to speculate in shares but to be exercised solely for the benefit of the individual proprietors or their representatives desirous of disposing of their shares in the said company and who may not readily find suitable and proper persons willing to purchase the same at a fair and reasonable rate) shall be transferred into the name of the secretary or chief clerk of the company or of such other person or persons as the directors shall think fit in trust for the company and such person or persons shall be indemnified out of the funds or property of the company from all liabilities which he or they may incur in accepting the transfer.

104. That the directors shall as soon as they can conveniently and advantageously do so sell at such price or prices and upon such terms as they shall think proper all the shares which shall have been from time to time purchased by them and also all the shares which under the provisions hereinafter in that behalf contained shall be forfeited to the company by persons neglecting or refusing to

execute these presents within the time hereinafter prescribed or from any other cause than that of non-payment of any instalment to any person or persons who shall be approved of by the directors as fit to become a proprietor or proprietors in respect thereof and shall appropriate the sum or sums for which such share or shares shall be sold and the dividends which may have been declared thereon in the interval between the purchase or forfeiture and the sale thereof to The Proprietors' Fund.

118. That whenever such notice as hereinafter is mentioned by any husband executor or administrator desirous of becoming a proprietor in respect of all or any of the shares held by him or her in that capacity or by the assignees of a bankrupt or insolvent proprietor of their having procured some person to become a proprietor in respect of all or any of the shares held by him or her in the capital of the company or by any person desirous of taking or purchasing any share or shares from the directors shall have been left at the office of the company the directors shall proceed without delay to take such notice into consideration and shall under the hands of two of the directors or under the hand of the secretary certify in writing their approbation or disapprobation of the person proposed in such notice to be the new proprietor of such share or shares.

122. That the directors shall cause the name and place of residence of every present and future proprietor and the number of shares belonging to every proprietor and the proper number of each share to be entered in a book to be kept for that purpose to be called The Share Register Book and shall once in every year cause the names in alphabetical order with the proper additions and the respective places of abode of the several persons who shall be then proprietors of the company and the number of shares held by such proprietors to be fairly entered in such book or in some other book to be kept for the purpose in such manner as that each proprietor may see at one view the manner in which the shares of the company are divided and the persons by whom the same are held and the directors shall on receiving at the office of the company notice in writing of a proprietor having changed his or her place of residence cause the new place of residence to be entered in such book as aforesaid and be substituted for the former place of residence.

126. That upon any person ceasing to be a proprietor in respect of all or any of the shares held by him or her and on any person becoming a proprietor of any share or shares in the capital of the company the directors shall cause all such entries to be made in the share register book as shall be necessary in order that the same book may at all times show who are the proprietors for the time being of the company and their respective places of residence and the number of shares held by each proprietor and the proper number of each share held by each of the proprietors for the time being.

127. Then when and so often as any proprietor shall under the regulations hereinafter contained sell or dispose of any share or shares in the capital of the company to the directors or shall procure any other person or persons to become a proprietor or proprietors in respect of any share or shares held by him or her in the capital of the company and such person or persons shall have been duly admitted a proprietor or proprietors in respect of such share or shares and shall have executed such deed of covenant as hereinafter is mentioned the directors shall (if all the instalments and calls which may have become due or been previously called

for on such share or shares shall have been duly paid) at any time thereafter when requested so to do by the proprietor of such share or shares his or her executors or administrators at his her or their expense and on the payment of such fee as the board may think proper cause to be delivered to such proprietor his or her executors or administrators a certificate signed by three directors or by the secretary certifying that such last proprietor is no longer the proprietor of such share or shares and mentioning the time when he or she ceased to be a proprietor of the same share or shares.

129. That the directors shall cause proper books to be kept and entries to be made therein of all such matters transactions and things as are usually written and entered in books of account kept by assurance companies and societies formed for the purpose of purchasing reversionary interests which books and also the share register book and all minute and other books belonging to the company shall be under the exclusive control of the directors and shall be considered as in their custody and shall be kept in such manner as they shall direct and together with reports which in pursuance of the directions hereinafter contained are to be produced by the directors and also these presents and the accounts of the receipts and expenditure of the company and all other documents and writings concerning the company shall at all reasonable times be open to the inspection of any proprietor upon the request in that behalf of any ten or more of the proprietors holding in their own right in the aggregate not less than 400 shares in the capital of the company and such proprietor shall be at liberty to take copies or extracts from the same minute and other books accounts and papers of any of them and to examine and compare such copies or extracts with the originals.

130. That the directors shall so far as the same shall be practicable cause to be prepared previously to and to be produced at the annual general meeting to be held in the year 1844 an account signed by the auditors of the company of the receipts and disbursements of the company from the commencement thereof up to that time and the particulars and amount of the funds and property of the company with such observations thereon as such auditors or any of them may think proper to make upon auditing the said accounts and also a report of the state and condition of the company and of the prospects thereof and shall also as far as the same shall be practicable cause to be prepared previously to and to be produced at every annual general meeting to be held after the annual general meeting in the year 1844 an account signed by the auditors of the company of such of the receipts and disbursements of the company up to that time as shall not have been included in any preceding account and the particulars and amount of the funds and property of the company with such observations thereon as such auditors or any of them may think proper to make and also a report of the state and condition of the company and of the prospects thereof.

135. That when and so often as any person or persons shall break or refuse or neglect to perform or comply with any or either of the covenants conditions and stipulations contained in these presents and which on his and their part ought to be performed and complied with and when and as the default or misconduct of any person or persons who in pursuance of the directions hereinbefore in that behalf contained may either solely or with sureties have given security to any one or more of the trustees or directors shall render any action suit or other proceeding necessary upon such covenant condition stipulation or security it shall be

lawful for the directors immediately to direct an action suit or other proceeding to be brought commenced carried on and prosecuted upon the same respectively and it shall also be lawful for the said directors when and so often as they shall see occasion so to do to order or direct any action or other proceeding to be brought commenced prosecuted or defended for or on account or in respect of any of the funds or property of the company or for or in respect of any covenant or engagement entered into for or on behalf of the company or for or on account of any other matter or thing concerning the rights or interests of the company and it shall be lawful for the directors if they shall see fit so to do to cause any action suit or other proceeding which shall be brought commenced prosecuted or defended by their order or direction as aforesaid to be stayed compromised or compounded and also to cause all disputes and differences upon which there may be cause for any such action suit or other proceeding to be referred to arbitration either before or after the commencement of such action suit or other proceeding and also to order or direct the necessary party or parties to such action suit or other proceeding to commence carry on prosecute or defend the same and to order or direct such necessary party or parties to refer any dispute or difference to arbitration either before or after the commencement of any action suit or other proceeding and such necessary party or parties to any such action suit or other proceeding shall not determine release or become nonsuit in such action suit or other proceeding without the consent of the directors and such party or parties shall be indemnified out of the funds and property of the company against all expenses and losses which he or they may incur or sustain in consequence of such action or other proceeding or any such arbitration as aforesaid and the sum or sums of money which may be recovered or received in consequence of any such action or other proceeding shall form part of the funds or property of the company and shall be appropriated by the directors to whichever of the funds called The Proprietors' Fund The First Life Assurance Fund or The Second Life Assurance Fund the board shall think the same ought to belong.

136. That whenever any such notice as hereinafter mentioned shall have been given to the directors or to some one or more of them or to the secretary or chief clerk or other officer or servant of the company by any proprietor or the husband of any female proprietor or the executor or administrator of any deceased proprietor or the assignees of any bankrupt or insolvent proprietor of any claim or demand having been made or of any action or suit or other proceeding having been commenced or instituted upon or against him her or them by any creditor or other person having or supposing himself herself or themselves to have any claim or demand upon the company the directors shall proceed without delay to take such notice into consideration and shall signify in writing to the proprietor or other person giving the notice their intention to take the said debt claim or demand upon themselves and either to pay the same or to defend such action suit or other proceeding at the expense of the company and the proprietor or other person or persons upon or against whom any such claim or demand may be made or such action suit or other proceeding may be instituted shall be indemnified out of the funds or property of the company from all liability in consequence thereof.

137. That subject and without prejudice to the powers hereinbefore given to the annual or special general meetings the directors shall have the entire management and control over the affairs and concerns of the company and shall in all

cases provided for by these presents or hereafter to be provided for by the annual or special general meetings act in strict conformity to the laws and regulations hereby established or hereafter to be established by such annual or special general meetings but in all cases for the time being unprovided for by these presents or by the annual or special general meetings it shall be lawful for the directors to act in such manner as shall appear to them best calculated to promote the welfare of the company, and for the better guidance of the directors in their management of and superintendence over the affairs and concerns of the company it shall be lawful for them to make whatever rules and regulations they shall think proper provided the same be not inconsistent with or repugnant to the fundamental principles or constitution of the company as established and settled by these presents or as altered or changed by virtue of the powers hereinbefore given to the special general meetings for that purpose and at any time to alter or rescind all or any of the rules or regulations which may be so made.

150. That the directors for the time being of the company shall be indemnified and saved harmless out of the funds and property of the company from and against any costs charges and expenses

180. That the trustees for the time being of the company and their respective heirs executors and administrators shall be indemnified and saved harmless out of the proceeds or property of the company from and against all costs charges damages and expenses

185. That the share register book shall for all the purposes of the company be considered as containing a correct list of the proprietors and their respective residences and the number of shares which they are respectively entitled to and it shall be incumbent on each proprietor to ascertain that his name and residence and the number of shares to which he is entitled and the proper number of each of such shares are correctly entered therein.

186. That every letter relating to any matter concerning the company which shall be sent to the proprietor by the post from the office of the company and shall be addressed to such proprietor at the place of his or her residence and by his or her name as entered respectively in the share register book shall be considered to have reached such proprietor and every such proprietor shall be deemed to have actual notice of the contents of such letter and shall be bound and concluded thereby and the husband of every female proprietor who shall have married and the executor or administrator of every deceased proprietor and the assignees of every bankrupt or insolvent proprietor shall be bound and concluded by such notice until information of the marriage death bankruptcy or insolvency of such proprietor shall have been given at the office of the company and the names and residences of such husband executors administrators and assigns shall have been duly left at the office of the company.

187. That every letter relating to any matter concerning the company which shall be sent by the post to any husband executor administrator or assignees of any person who at the time of her marriage or of his or her death bankruptcy or insolvency as the case may be shall have been entitled to any share or shares in the capital of the company and shall be addressed to such husband executor administrator or assignee at the place of his or her residence and by his or her name as entered in the share register book shall be considered to have reached such husband executor administrator or assignee and every such husband executor

administrator or assignee shall be deemed to have sufficient notice of the contents of such letter and shall be bound and concluded thereby.

188. That whenever two or more persons shall be jointly possessed of or entitled to any share or shares in the capital of the company the person whose name shall stand first in the books of the company as one of the joint proprietors of such share or shares shall be the only person to whom it shall be incumbent on the part of the company to send any notice in respect of such share or shares and every letter which shall be addressed to such first-named proprietor by his or her name and place of residence as entered in the share register book whether giving notice of any instalment which may have become due or been called for or of any dividends which may have been declared in respect of such share or shares shall be considered to have reached such first-named proprietors and every one of the joint proprietors of such share or shares shall be deemed to have sufficient notice of the contents of such letter and shall be bound and concluded thereby.

189. That in all cases where any share or shares shall be held by any person or persons in trust for any other [person or persons the person or persons in whose name or names such share or shares shall stand in the books of the company shall for all the purposes of these presents be deemed the sole and absolute owners and proprietors of such share or shares respectively and the receipt of such person or persons shall notwithstanding any equitable claim or demand of any person or persons beneficially entitled to such share or shares be a sufficient discharge for the money which may have become payable from the company upon or in respect of such share or shares and shall discharge the company and other proprietors thereof from the obligation of seeing to the application or from being accountable for the misapplication or nonapplication of such money.

190. That whenever two or more persons shall be joint proprietors of any share or shares in the capital of the company the receipt of any one of the persons in whose names such share or shares shall stand in the books of the company shall be an effectual discharge for all dividends and other moneys which may become payable from the company upon or in respect of such share or shares.

191. That the legatees or next of kin of deceased proprietors shall not be entitled to hold in either of those capacities any share or shares in the capital of the company but in all cases where legatees or next of kin of deceased proprietors shall become entitled to any share or shares the executors or administrators of such deceased proprietors shall as between themselves and the company be considered as the only persons who shall be entitled to become proprietors and it shall be lawful for such executors or administrators to transfer the same to such legatees or next of kin who shall be admitted as proprietors in respect of such shares on signing the proprietors' deed or to procure some other person to become proprietor thereof or to sell the same to the board of directors.

192. That the husband of any female proprietor or the executor or administrator of any deceased proprietor shall not be a proprietor in respect of any shares held by him in the capital of the company in that capacity but may in the manner and upon the terms hereinafter mentioned either become a proprietor or procure some other person to become a proprietor in respect of any share held by him or sell the same to the directors.

193. That before any husband executor or administrator can either become a proprietor or procure some other person to become a proprietor in respect of any

share held by him in that capacity or can sell the same to the directors he shall leave or cause to be left at the office of the company for the space of forty-eight hours the certificate of the marriage or as the case may be the probate of the will or the letters of administration under which he claims to be entitled to such share or shares or otherwise an official extract or copy of such will or letters of administration in order that a minute or extract of such certificate will or administration respectively may be inserted in the share register book.

194. That the assignees of any bankrupt or insolvent proprietors shall not be proprietors in respect of any share held by them in the capital of the company in that capacity but may in the manner and upon the terms hereinafter mentioned procure some person to become a proprietor in respect of any share so held by them or sell the same to the directors.

195. That before the assignees of any bankrupt or insolvent proprietor in respect of any share held by them in that capacity shall procure any person to become a proprietor in respect of such or sell the same to the board of directors they shall leave at the office of the company for the space of forty-eight hours the certificate of their appointment as assignees or as the case may be the deed by which the effects of the insolvent proprietors were assigned to them or an attested copy of such deed in order that a minute or extract thereof may be inserted in the share register book.

196. That any proprietor of the company may procure some other person approved by the directors to become proprietor in respect of all or any of the shares held by him or her in the capital of the company or may sell the same to the directors.

197. That the husband of any female proprietor and any executor or administrator of a deceased proprietor who shall be desirous of becoming a proprietor in respect of all or any of the shares held by him in that capacity and also every other person who shall be desirous of taking or purchasing any share or shares from the directors shall give notice in writing at the office of the company of such his desire and shall describe in such notice his name and place and residence and (except in case of purchasing from the directors) the number of the share or each of the shares in respect of which he is desirous of becoming a proprietor.

198. That the holder of any share or shares in the capital of the company whether any such holder shall be a proprietor or the husband of any female proprietor or the executor or administrator of a deceased proprietor or the assignee of any bankrupt or insolvent proprietor who shall have procured any person or persons to become a proprietor or proprietors in respect of all or any of his or her shares in the capital of the company shall give notice in writing at the office of the company of his or her having procured such person or persons to become a proprietor or proprietors and shall describe in such notice the name and place of residence of the proposed proprietor or of each proprietor and the number of the share or each of the shares in respect of which he or she shall have procured such person or persons to become a proprietor or proprietors.

199. That whenever the directors shall in the manner hereinbefore required have certified that any person who may have been procured to become a proprietor of any share or shares in the capital of the company is fit to be a proprietor or proprietors of such share or shares the proprietor or the husband of the female proprietor or the assignee of the bankrupt or insolvent proprietor or the executors or

administrators of the deceased proprietor shall be at liberty to transfer the same without delay.

200. That every transfer of any share or shares in the capital of the company shall be made at the office of the company or at such other place as the directors shall require and in such manner and form as they shall prescribe for vesting such share or shares in the proposed new proprietor.

201. That the deed or instrument by which any share or shares shall be transferred shall when executed be deposited and left at the office of the company and an extract or minute thereof shall be entered in the share register book.

202. That every husband and every executor and administrator who shall be desirous of becoming a proprietor in respect of all or any of the shares held by him in that capacity and every person who may propose to take or purchase any share from the directors and who shall be approved of by the directors in the manner hereinbefore required to be a proprietor in respect of a share or shares and who shall not at the time of such approval be a proprietor shall within one calendar month after such approval shall have been certified to him by the directors execute at the office of the company or at such other place as the company shall require either in person or by attorney a deed of covenant in a form to be prescribed by the directors to abide by the rules and regulations of the company.

203. That every person who may have been approved by the directors as fit to become a proprietor in respect of any share or shares in the capital of the company and to whom a transfer of such share or shares shall have been made and who shall not at the time of such transfer being made be a proprietor of the company shall within one calendar month after such transfer shall have been made execute at the office of the company or at such other place as the directors shall require either in person or by attorney a deed of covenant to abide by the rules and regulations of the company.

204. That the expense of preparing and executing the deed of covenant which under the provisions hereinbefore contained is to be entered into by any person becoming a proprietor of the company shall be borne and paid by the person or persons executing the same and entering into the covenant therein contained and the expenses of preparing and executing every deed of transfer shall (unless otherwise arranged between the parties) be borne and paid by the party to whom the transfer is made.

205. That no dividend interest or profit which may be declared or appropriated in respect of or upon any share of any female or deceased bankrupt or insolvent proprietor in the interval between the time of her marriage or his or her death or bankruptcy or having had his or her estate or effects assigned over to any person or persons pursuant to or for the purpose of taking the benefit of any Act for the relief of insolvent debtors and of some person becoming a proprietor of such share shall be received by any person or persons nor shall the rights or privileges attending such share be exercised during such interval by any person or persons whomsoever but the same respectively shall remain in suspense and so soon as any person shall have become a proprietor of such share the husband of such female proprietor or the executors or administrators of such deceased proprietor or the assignees of such bankrupt or insolvent proprietor shall on payment of all instalments which may have become due or been previously called for and may

then remain unpaid on such share be entitled to receive the dividends interest and other profits which might have been so suspended.

206. That every husband and every executor and administrator who may have been approved of by the directors in manner hereinbefore mentioned as a fit person to become a proprietor of any share held by him in that capacity and every person who may have been approved of by the directors as a fit person to become a proprietor of any shares which he may purchase from the directors and who at the time of such approval shall be proprietor of the company in respect of any other share or shares shall as to the share in respect of which he may have been so approved as aforesaid as fit to become a proprietor be from the time of such approval considered a proprietor of the company and subject to the payment of all the instalments which may have been or may be thereafter called for on such share and to all other duties claims and demands in respect of the same and in the case of a husband or executor or administrator shall then be entitled to receive the dividends and other profits if any which may have remained in suspense in respect of such share.

207. That every person who may have been approved by the directors as fit to become a proprietor of any share in the capital of the company held by him in the capacity of husband of a female proprietor or the executor or administrator of a deceased proprietor or who may have been approved of as a fit person to become a proprietor of any share which he may be desirous of taking or purchasing from the directors and who at the time of such approval shall not be a proprietor of the company shall from the time of his executing the deed of covenant hereinbefore required be considered a proprietor and in the case of a husband or executor or administrator shall then be entitled to receive the dividends and other profits (if any) which may have remained in suspense in respect of such share.

208. That every person who may have been approved by the directors as fit to become a proprietor in respect of any share in the capital of the company and to whom a transfer shall have been made of such share and who on the day of the date of such deed of transfer shall be a proprietor of the company in respect of any other share or shares shall as to the share which may have been so transferred to him become a proprietor of the company and shall thenceforth be subject to the payment of all the instalments which may thereafter be called for on such share and to all other duties claims and demands in respect of the same.

209. That every person who may have been approved of by the directors as fit to become a proprietor in respect of any share in the capital of the company and to whom a transfer shall have been made of such share and who on the day of the date of such deed of transfer shall not be a proprietor of the company shall from the time of his or her executing the deed of covenant hereinbefore mentioned be considered a proprietor of the company.

210. That when and so often as any person not a purchaser from the directors shall in the manner hereinbefore required have become a proprietor of any share or shares in the capital of the company and shall have executed a deed of covenant to observe the covenants agreements and provisions contained in these presents the last proprietor of such share or shares and all persons claiming by from or under him (except the new proprietor) shall from the time of such new proprietor becoming a proprietor in respect of such share or shares and the payment of all

instalments which may have become due or been previously called for on such share or shares be for ever acquitted and discharged from all liabilities and obligations in respect of such share or shares and from all further claims and demands on account of the same and the certificate to be given by the directors hereinbefore mentioned of such person having ceased to be a proprietor in respect of such share or shares shall at all times be final and conclusive evidence to all intents and purposes of such acquittance or discharge as aforesaid in respect of such share or shares.

211. That when and so often as any person not a purchaser from the directors shall in manner hereinbefore required have become a proprietor of any share or shares in the capital of the company the last proprietor of such share or shares and all persons claiming by from or under him or her (except the new proprietor) shall from the time of such new proprietor becoming a proprietor have no claim or demand whatsoever either at law or in equity either upon or against the company or any one or more proprietors thereof for the time being for or on account or in any wise relating to such share or shares except in respect of the dividends and other profits which may have been declared previously to the time of such new proprietor becoming a proprietor and shall have been unreceived.

213. That the account of the receipts and disbursements of the company which in pursuance of the directions hereinbefore contained is to be produced by the directors at every annual general meeting shall after the same shall have been read at the meeting and approved of be signed by the person in the chair at such general meeting in testimony of such approval and having been so signed shall be binding and conclusive on all the proprietors of the company and shall not on any pretence whatever be afterwards opened unless some manifest error to the amount of £50 or upwards be discovered therein by any one of the proprietors before the annual general meeting then next following after such approval in which case the account shall be opened so far only as may be necessary to rectify the error.

216. That no proprietor his or her executors administrators or assigns as between him her or them and all or any of the other proprietors of the company or their respective heirs executors administrators or assigns shall in any case or event be answerable in respect of the calls debts and other demands of or upon the company beyond the amount of his or her share or interest for the time being in the capital of the said company nor shall any person his or her executors administrators or assigns as between him her or them and all or any of the other proprietors of the company or their respective heirs executors administrators or assigns in any case be answerable or accountable for or in respect of any such calls debts or demands in any manner or to any extent or for any cause whatsoever after such person shall have ceased to be a proprietor by the transfer of his or her share or shares in the capital of the said company in the manner and upon the terms hereinbefore declared.

217. That in case any action suit or other proceeding either at law or in equity shall be brought commenced or instituted by any creditors or other person having or supposing himself or herself to have any claim or demand upon the said company or upon the proprietors thereof for or in respect of any money or debt due or owing by the said company or of any judgment or decree which shall be had in any action suit or proceeding at law or in equity against the said company or any of the directors trustees or other officers for the time being of the company or for

goods supplied to the said company or for work or labour done to or for the said company or for any loss damage or injury sustained or for any other cause matter or thing whatsoever relating thereto against any proprietor or the husband of any female proprietor or the executors or administrators of any deceased proprietor or the assignees of any bankrupt or insolvent proprietor and the proprietor or proprietors or other person or persons against whom any such action suit or other proceeding shall or may be brought or instituted shall be compelled or adjudged or required to pay the debts or sum so claimed or demanded or any part or portion thereof or any sum or sums of money in consequence thereof or shall sustain or incur any loss costs charges damages and expenses in defending or resisting any such claim or demand or any such action suit or other proceeding then and in every such case the debt claim or demand (or the sum or sums of money which shall have been so decreed or adjudged to be paid) and the loss costs charges damages or expenses which shall have been so sustained or incurred shall be considered as debts due and owing by the company to the proprietor or proprietors or the person or persons by whom the same shall be decreed or adjudged to be paid or who shall so pay incur or sustain the same and shall be borne and paid by the several proprietors for the time being of the company in proportion to their respective shares or interests therein.

218. That when and so soon as the amount of the costs to which any proprietors or the husband of any female proprietor or the executors or administrators of any deceased proprietor or the assignees of any bankrupt or insolvent proprietor shall be subject or liable in consequence of any such claim or demand action suit or other proceeding as aforesaid shall have been ascertained and settled by the taxation thereof by the proper officer of the Court in which such action suit or other proceeding shall have been instituted in which taxation the costs shall be allowed not only as between attorney and client but so and in such manner as that the party sustaining the same may be fully reimbursed all such reasonable expenses as he may have incurred or been put unto in consequence of such claim or demand having been made upon him then and in such case and immediately thereupon the debt claim or demand or the sum or sums of money which shall have been so decreed or adjudged to be paid and the amount of such costs after the same shall have been so ascertained and taxed as aforesaid shall be paid on demand by the directors or trustees for the time being of the company or any of them out of any of the funds or property of the company in their hands to the proprietor or proprietors or other person or persons who shall have been so decreed or adjudged to pay and have sustained or incurred the same respectively and the receipt or receipts of such proprietor or proprietors or of such person or persons his her or their executors administrators or assigns shall at all times be a sufficient voucher or indemnity to the said directors or trustees for the payment thereof and the same shall be allowed in their accounts as a payment made on account of the company in the same manner in all respects as if the same had been ordered to be made by a resolution of the said directors.

219. That if the directors or trustees for the time being of the company shall neglect or refuse or shall not have in their hands sufficient funds belonging to the company to enable them to pay within the space of fourteen days next after such demand as aforesaid shall have been made upon them the whole or any part of such debt and costs then and in such case such debt and costs or so much thereof

as shall not have been paid by the directors or trustees shall be divided by the proprietor or proprietors or other person or persons by whom the same shall have been decreed or adjudged to be paid and who shall be subject to pay the same into 25000 equal parts or shares or into as many equal parts or shares as the capital of the said company shall at that time be considered as divided into and every proprietor for the time being of the said company shall in proportion to the extent of his or her share or interest therein pay one or more of such parts or shares upon demand to the proprietor or proprietors or other person or persons who shall have paid or shall be liable to pay such debt and costs.

220. That if under the authority of any Act of Parliament or letters patent which may be passed or issued for the purpose of enabling the company to sue and to be sued in the name or names of any one or more of the officers or individual members thereof an execution shall be issued against any proprietor of the company upon any judgment obtained against the nominal plaintiff or defendant or plaintiffs or defendants in an action brought in pursuance of such act or letters patent and the proprietor against whom such execution shall be issued shall not within the space of fourteen days after the issuing thereof be reimbursed out of the funds or property of the company all such moneys costs and charges as he shall have paid or be put unto or become chargeable with in consequence of such execution having been issued against him it shall be lawful for such proprietor to divide such costs and charges or so much thereof as he shall not within the time aforesaid have been so reimbursed as aforesaid into 25000 equal parts or shares or into as many equal parts or shares as the capital of the company shall at that time be considered divided into and each and every proprietor for the time being of the said company shall in proportion to the extent of his share or interest therein pay one of such parts or shares upon demand to the proprietor against whom such execution shall have been issued or to his or her executor or administrator.

221. That upon the neglect or refusal of any proprietor or of the husband of any female proprietor or of any person or persons who may at any time hereafter become proprietor or proprietors of any share or shares in the capital of the said company or of the executors or administrators of any deceased proprietor or of the assignees of any bankrupt or insolvent proprietor to pay upon demand his fair or their due and fair proportion (such proportion having been so ascertained and fixed as hereinbefore is mentioned) of such debt and costs as aforesaid or of such moneys and costs as may have been paid and incurred by any proprietor by reason or in consequence of execution having been issued against him under the authority of any such Act of Parliament or letters patent as aforesaid then and in every such case it shall be lawful for the person or persons to whom the same ought to have been paid to sue for and recover the same in or by action suit or plaint against the proprietor or proprietors or other person or persons who shall so neglect or refuse as aforesaid in any of Her Majesty's Courts of Record at Westminster or in any other Court of Record or in any Court of Request for the recovery of debts or demands.

222. That no proprietor or any other person or persons who shall have been so decreed or adjudged to pay any such debt claim or demand as aforesaid or who shall have paid sustained or incurred any such costs as aforesaid shall be at liberty to commence or institute any action suit or plaint against any other proprietor or the husband of any female proprietor or the executors or administrators of any

deceased proprietor or the assignees of any bankrupt or insolvent proprietor for the recovery of any share or proportion of such debt or costs under the powers hereinbefore contained unless he she or they shall have given notice in writing under his her or their hands to the directors by leaving such notice at the office of the company addressed to the directors or to the secretary or chief clerk of the company of the claim or demand which shall have been made upon him her or them thereby requiring the directors either to pay the same or to take such claim or demand upon themselves and to defend the same at the expense of the company.

223. That no proprietor or husband of any female proprietor or executor or administrator of any deceased proprietor or assignee of any bankrupt or insolvent proprietor against whom any such action suit or other proceeding as aforesaid either at law or in equity may be brought or instituted by any creditor or other person having or supposing himself or herself to have any claim or demand upon the said company or upon the holders of shares in the capital thereof shall be at liberty to call upon the directors to pay the debt or sum demanded or to defend any such action suit or other proceeding or shall have any claim or demand upon any other of the proprietors of the said company under these provisions in respect of any such debt or costs as aforesaid if such proprietor husband executors administrators or assignee or his wife testator intestate or insolvent shall at the time of such action being brought be in arrear to the company for any instalment or instalments which may be then due or for any calls which may have been made upon the proprietors of the said company or for any interest due thereon unless he or she shall immediately upon such action suit or proceeding being commenced or instituted against him or her and upon the filing or delivery of any declaration thereon pay up to the said company the whole of the sum for which he or she shall be in arrear and which shall be then due and owing by him or her to the company together with interest thereon after the rate of £5 per cent. per annum from the time or respective times when the same ought to have been paid :

Provided always nevertheless that if the sum for which any such action suit or other proceeding may be commenced or instituted shall exceed the sum which shall or may be due from such proprietor husband executors administrators or assignee or his wife testator or intestate or insolvent it shall be lawful for the directors if they think proper so to do but not otherwise at any time thereafter to pay to such proprietor husband executors administrators or assignee the difference between the sum which shall be so recovered against him or her and the sum which may be due from him or her to the company but the costs and expenses of any such action suit or other proceeding shall not in such case be reimbursed him or her by the company but shall be borne and paid by him or her out of his or her own proper moneys.

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AND THIS INDENTURE ALSO WITNESSETH that each and every of the said parties to these presents of the 2nd and 3rd parts respectively for himself or herself and his and her heirs executors and administrators doth hereby severally covenant with the said persons parties to these presents of the 1st part jointly their executors and administrators and with each and every of them separately and with their respective executors and administrators and each and every of them the said several persons parties to these presents of the 1st part for himself his heirs

executors and administrators doth hereby severally covenant with the said persons parties to these presents of the 2nd part jointly their executors and administrators and with each and every of them separately and with their respective executors and administrators——

That he or she the party so covenanting his or her executors or administrators shall and will well and truly pay or cause to be paid unto the trustees for the time being of the said company the sum of £5 for each and every share taken or held by him or her in the capital of the said company in manner appointed for payment thereof and also shall and will well and truly pay or cause to be paid all such further instalments sum and sums of money upon each and any of the shares for the time being held by him or her in the capital of the said company as shall from time to time and at any time become due or be called for by the directors or by any general meeting in pursuance of the powers hereinbefore vested in them respectively for that purpose and all such other sum or sums of money as shall in pursuance of the provisions hereinbefore contained be due and owing by him or her and shall and will make all and every such last-mentioned payments at the time and place and in the manner directed by the directors without any deduction or abatement whatsoever and according to the true intent and meaning of these presents.

AND THIS INDENTURE FURTHER WITNESSETH that each and every of the said several persons parties to these presents of the 2nd and 3rd parts respectively for himself and herself and his and her heirs executors and administrators doth hereby severally further covenant with the said persons parties to these presents of the 1st part jointly their executors and administrators and with each and every of them separately and with their respective executors and administrators and each and every of the said several persons parties hereto of the 1st part for himself his heirs executors and administrators doth hereby severally covenant with the said persons parties hereto of the 2nd part jointly their executors and administrators and with each and every of them separately and with their respective executors and administrators——

That in case any action or suit shall be commenced or prosecuted against the party so covenanted by the direction of any general meeting or of the directors or by any one or more of the trustees for the time being of the company he or she the party so covenanting his or her executors or administrators shall not plead this deed of settlement or any clause matter or thing herein contained or the non-joinder of any proprietor or proprietors as plaintiff or plaintiffs or defendant or defendants in abatement or in bar to any such action or suit or in any other manner resist or defend any such action or suit on any such ground.

AND THIS INDENTURE FURTHER WITNESSETH that for the purpose of still further facilitating the remedy of the said several proprietors against each other in the event of any claim or demand being made upon any one or more of them for any debt due or owing by the company or by the whole of the proprietors collectively or for any loss damage or injury caused or occasioned by the company and of more effectually indemnifying the person or persons upon whom any such claim or demand may be made against all such loss costs charges damages and expenses as they he or she may sustain in consequence thereof each and every of the several persons parties hereto so far as relates to the acts and deeds of himself and herself and of his and her heirs executors and administrators doth hereby for

himself and herself and his and her heirs executors and administrators and so as to charge him or her in damages in proportion to the extent of his or her interest in the capital of the said company for the time being such interest to be ascertained and determined by the number of shares which he or she may hold therein as shewn by the books of the company but not further or otherwise severally covenant with the others of them the said parties hereto and with any two or three or more of them their heirs executors and administrators and with each and every of them separately and with their respective heirs executors and administrators in manner following (that is to say):

That in case any action suit or other proceeding either at law or in equity shall be brought or instituted by any creditor or other person having or supposing himself or herself to have any claim or demand upon the said company or upon the proprietors thereof for or in respect of any moneys or debt due and owing by the said company or of any judgment or decree which shall be had or recovered in any action or suit or other proceeding at law or in equity against the said company or any director or trustee thereof or for goods supplied to the said company or for work and labour done to or for the said company or for any loss damage or injury sustained or for any other cause matter or thing whatsoever relating thereto against any others or other of the said parties hereto his her or their executors or administrators or against any proprietor or proprietors for the time being of the said company and the person or persons against whom any such action or suit or other proceeding shall or may be brought or instituted shall be compelled or adjudged or decreed to pay the debt or sum so claimed or demanded or any part or proportion thereof or any sum or sums of money in consequence thereof or shall sustain or incur any loss costs charges damages or expenses in defending or resisting any such debt claim or demand or any such action suit or proceeding then and in every such case and so often as the same shall happen he or she the party so hereby covenanting shall and will when and so soon as the person or persons so decreed or adjudged to pay any such debt claim or demand or any part thereof as aforesaid or who shall have sustained or incurred any such costs as aforesaid shall have caused such costs to be taxed in the manner hereinbefore directed and have divided such debt and costs when so taxed or either of them as the case may require into 25000 equal parts or shares or into as many equal parts or shares as the capital of the said company shall be then considered as divided into well and truly pay or cause to be paid upon demand one or more of such parts or shares in proportion and according to the extent of his or her interest in the capital of the company (such interest to be determined by the number of shares he or she shall hold therein as shown by the books of the company) unto the person or persons who shall have paid or who shall be liable to pay such debt and costs or either of them without any deduction or abatement whatsoever and according to the true intent and meaning of these presents:

And moreover that he or she the party so covenanting shall and will in proportion to the amount of his or her interest in the capital of the said company to be ascertained and determined as aforesaid from time to time and at all times hereafter well and effectually save defend keep harmless and indemnified his or her co-proprietors and each and every of them and their and each and every of their respective heirs executors and administrators' goods chattels and effects from and against all costs and charges damages losses and expenses which they or

any or either of them or their or any or either of their heirs executors or administrators shall or may pay incur or sustain by reason or in consequence of any claim or demand being made upon them or any or either of them for any debt due or owing by the said company or by the whole of the proprietors collectively or for any loss damage or injury caused or occasioned by the company to any person or persons whomsoever and which shall or may not be prosecuted or brought to trial or upon which no decree or judgment shall or may be made or given.

AND THIS INDENTURE LASTLY WITNESSETH that each and every of them the said parties hereto of the first part but so far only as concerns his own acts and deeds for himself his heirs executors and administrators doth hereby severally covenant with the said parties hereto of the second part jointly their executors and administrators and with each and every of them separately and their respective executors and administrators in manner following (that is to say):

That they the said parties hereto of the first part shall and will from time to time permit and suffer their or any of their names to be made use of by the directors for the time being in all or any actions suits and other proceedings which shall or may at any time hereafter be commenced instituted or prosecuted by or by the order of the directors against any one or more of the several other persons parties hereto or any other the proprietor or proprietors for the time being of the said company or any other person or persons or any or either of their heirs executors or administrators for breach non-performance or non-observance of any of the covenants provisoes and agreements herein contained :

And further that they the said parties hereto of the first part shall not nor will nor shall or will any or either of them at any time release any such action or suit nor willingly nor wilfully do or cause to be done or be party or privy to any act deed matter or thing whatsoever whereby or by reason or means whereof the said directors shall or may be prevented or hindered from recovering or obtaining a verdict or judgment in any such action or suit or whereby any such action or suit shall or may be in anywise delayed or defeated without the consent of the directors first obtained for that purpose :

And also that the said parties hereto of the first part respectively and their respective executors and administrators shall and will stand be possessed of and interested in all and every sum and sums of money which shall or may be recovered by them any or either of them or their or any or either of their executors or administrators in any action or suit which may be brought or instituted in their or any of their names for breach non-performance or non-observance of any of the covenants provisoes stipulations or agreements herein contained in trust for the company and to apply and dispose of the same in such manner for the benefit of the company as the directors shall from time to time order or direct.

In witness &c.

C.

ALBERT SUPPLEMENTAL DEED.

THIS INDENTURE made the 31st day of March 1858 between, William Beattie of the Honourable Swynfen Thomas Carnegie James Croudace of Swynfen Jervis of William King of George Goldsmith Kirby of James Nichols of the Right Honourable Lord George Paulet Thomas Porter of and George Raymond of the directors of the hereinafter mentioned company of the first part the said Swynfen Jervis William Beattie and George Raymond the trustees of the said company of the second part and the several other persons whose names are hereto subscribed and seals affixed of the third part :

Whereas by a certain Indenture of Settlement bearing date the 1st day of July 1839 a company was constituted and established by the style or name of The Freemasons and General Life Assurance Loan Annuity and Reversionary Interest Company for the objects hereinafter mentioned or referred to :

And whereas by a resolution of the said company passed at a special general meeting of the shareholders thereof on the 31st day of December 1849 and confirmed at a special general meeting of the shareholders of the said company on the 16th day of January 1850 the name of the said company was changed to that of The Albert Life Assurance Company :

* * * * *

And whereas of the 25000 shares of £20 each originally proposed to be issued by the said company only 8240 of such shares have been actually issued on each of which the sum of £3 has been called up and paid and on some of which further sums have from time to time been paid in anticipation of calls so that the total paid up capital of the said company now amounts to the sum of £67199 :

And whereas at a special general meeting of the proprietors of the said company held on the 20th day of May 1856 in conformity with the provisions of the said indenture of settlement certain resolutions were passed to the following effect that is to say—

- 1st. That the directors should thereby be authorized to make a further issue at par of any number of shares of the company not exceeding 5000 and to set apart and apply the proceeds of such issue exclusively in the purchase of reversionary interests and the transaction of such other business of a like nature as is hereinbefore particularly mentioned or referred to including therein the purchase and sale of policies of life assurance granted by the said or any other life assurance company ;
- 2nd. That it should be left to the absolute discretion of the directors to make such issue of shares as aforesaid on such terms and conditions and subject to such stipulations and regulations as they should consider reasonable and best calculated to promote the general interests of the company ;

- 3rd. That the directors were thereby authorized so to arrange with the subscribers for the said additional shares that calls might be made for the full amount payable thereon irrespectively of the other shares of the company and the calls made or to be made thereon;
- 4th. That the said additional shares should in the first instance be offered by the directors to the holders of the then existing shares in the company in manner therein mentioned;
- 5th. That the new business so to be transacted as aforesaid should be managed and conducted by the directors of the company in such manner as they should see fit but subject to the regulations to the deed of settlement and that two separate auditors should be appointed in respect of such new business in the same manner as the other auditors of the company are appointed;
- 6th. That the powers of investment on mortgage or otherwise contained in the said indenture of settlement should be applicable to the moneys to be raised by such issue of new shares as aforesaid:

And whereas at a special general meeting of the said company held on the 10th day of June 1856 the said resolutions were duly confirmed:

* * * * *

And whereas the said directors in further pursuance of the said power so given to them as aforesaid by the said resolution of the 20th day of May 1856 and also for the purpose of more fully carrying into effect the said resolution of the directors of the 25th day of June 1856 have further resolved that such new shares as aforesaid shall be issued only to such persons as should execute an indenture containing such provisions rules and regulations as are hereinafter contained the same having been approved at a meeting of the said directors held on the 17th day of March 1858:

And whereas the said several persons parties hereto of the third part have respectively agreed to purchase the number of shares set after their respective names as the same respectively are affixed to these presents on the terms and conditions and subject to the restrictions hereinafter contained:

Now THIS INDENTURE WITNESSETH that for the purpose of carrying out the said agreement and in consideration of the premises each of them the said several persons parties hereto of the third part doth hereby for himself or herself his or her own heirs executors administrators' acts and deeds but not further or otherwise or the one for the others or any other of them or for the heirs executors or administrators of the others or any other of them covenant and agree with the said parties hereto of the first part as such directors as aforesaid their executors administrators and assigns and also by way of separate covenant with the said Swynfen Jervis William Beattie and George Raymond jointly as such trustees as aforesaid their executors administrators and assigns and with each and every of them separately and the executors administrators and assigns of each and every of them—

That they the said parties hereto of the third part respectively and their respective executors or administrators shall and will accept take and purchase the number of shares in the capital of the said company so set after their respective names as aforesaid and shall and will in all respects perform observe and comply with the rules and regulations for the time being of the said company as established by or under the said indenture of settlement subject only to such alterations therein or

additions thereto as are authorized made or required by these presents and shall and will well and truly pay or cause to be paid unto the trustees or trustee for the time being of the said company all such instalments or sums of money on each and every of the shares held by him or her the party hereby covenanting in the capital of the company as have not yet been paid thereon on the respective days appointed for payment thereof in the hereinbefore mentioned resolution of the directors of the 25th day of June 1856 with interest thereon respectively after the rate of £5 per cent. per annum from such respective days in case any default shall be made in any such payment as aforesaid and shall and will in all respects submit to and be bound by the restrictions and perform observe and comply with the rules and regulations hereinafter particularly mentioned and contained each of the said last-named parties hereby giving his or her full sanction to the directors of the company to impose and carry out the same in the following manner that is to say—

1. The shares to be issued under the authority of the said resolution of the 20th day of May 1856 so made and confirmed as aforesaid shall be known and called by the name or title of new shares

3. That a new fund shall be formed which shall be called the New Proprietors' Fund to distinguish it from the hereinbefore mentioned Proprietors' Fund which is hereinafter mentioned or referred to as the Original Proprietors' Fund and such New Proprietors' Fund shall be composed of the sums paid by the proprietors of such new shares as aforesaid as instalments or calls on or in respect thereof and of one half of the premiums (if any) to be paid on the purchase of any such new shares as aforesaid and also of the additions to be made to such last-mentioned fund as hereinafter mentioned, and of the increase thereof from time to time by accumulation or otherwise and the other half of such premiums as lastly aforesaid shall be applied and disposed of in the same manner as in the said indenture of settlement is directed with respect to the premiums on the original shares in the capital of the company.

4. That such part of the said New Proprietors' Fund as shall arise from the payment of such deposit or instalments or calls and also of such other half part of the said premiums as aforesaid shall be reserved exclusively for the purchase of such reversions remainders and expectancies and other reversionary or contingent interests as are in the said indenture of settlement and hereinbefore particularly mentioned or referred to including the purchase of policies of assurance on any life or lives or survivorship or on any contingency dependent upon the duration of human life and whether issued by the said company or any other life assurance company and that during such time as any part of the said New Proprietors' Fund shall not be invested in any such purchase as aforesaid the same shall be invested at interest in such manner and on such securities as in the said indenture are mentioned with respect to the general funds of the company but subject and without prejudice to the right of the directors to keep such balance at their bankers as they shall from time to time think proper.

* * * * *

In witness, &c.

D.

ALBERT SPECIAL RESOLUTIONS.

*Passed at Special General Meetings of Shareholders, 17 July and
3 August 1860.*

WHEREAS by the 138th clause or provision of the Deed of Settlement of the Albert Life Assurance Company formerly called the Freemasons and General Life Assurance Loan Annuity and Reversionary Interest Company it is declared that the directors including the chairman and deputy chairman should consist of not more than twelve and not less than six members unless the numbers should by the appointment of additional directors under the power thereafter contained (being a power to increase the number of directors by the appointment of additional directors at any time prior to the general meeting in 1844 and which power was not exercised) be increased or unless a general meeting should think fit to reduce the number either permanently or for a limited period or should abstain at any time from filling up the vacancies which might occur at any annual day of election but the number of directors should not in any case be less than five :

And whereas by the 144th clause or provision of the said Deed of Settlement it is declared that (subject and without prejudice to the appointment thereinbefore contained of the first directors of the said company) the directors (other than the managing director) should at and after the annual meeting in the year 1846 be elected by the proprietors :

And whereas by a resolution passed at a special general meeting of proprietors held on the 31st day of December 1849 and confirmed at a special meeting held on the 16th day of January 1850 it was resolved that the directors for the time being of the company might at any time in the interval between the annual general meetings if they should think it expedient so to do elect any additional director or directors or fill up any vacancy in the office of director provided that the number of directors for the time being were not increased to more than twelve by the exercise of the power conferred by the resolution now in recital and provided that no person should be capable of being so elected a director of the company unless at the time of his election he should be a holder of 50 shares at least in his own right in the capital of the company and should have been a proprietor of the company at least six calendar months and the director or directors so elected to go out of office at the annual general meeting next after his or their election :

And whereas in consequence of the great increase of late years in the business of the company and with a view to facilitate the obtaining of additional business by the acquisition by purchase or otherwise or by the amalgamation with the business of the company of the business of other life assurance companies it has been deemed expedient to authorize an increase in the number of directors and to extend the power of appointing directors otherwise than by election by the proprietors subject to the restrictions hereinafter expressed :

And whereas in order to carry out the objects aforesaid it is proposed to repeal the said 138th and 144th clauses or provisions of the said Deed of Settlement respectively and to rescind the said recited resolution and to make such other rules and regulations in lieu thereof respectively as are hereinafter expressed and contained :

And whereas doubts have been entertained whether under the existing rules and regulations of the company the directors thereof for the time being have power or authority for or on behalf of the company to acquire by purchase or otherwise or to amalgamate with the business of the company the business of other life assurance companies and in order to obviate such doubts it has been deemed expedient that such power or authority should be expressly given to them :

NOW IT IS HEREBY RESOLVED and determined that the 138th and 144th clauses or provisions of the said Deed of Settlement shall be and they are hereby respectively repealed wholly and that the said recited resolution shall be and the same is hereby rescinded :

AND IT IS HEREBY FURTHER RESOLVED and determined that in lieu thereof the clauses or provisions hereinafter set forth and respectively numbered 1, 2, 3, 4, 5 and 6 shall henceforth form and be part of the rules and regulations of the company :

1. That the directors including the chairman and deputy-chairman shall consist of not more than twenty-four nor less than six unless a general meeting shall think fit to reduce the number either permanently or for a limited period or shall abstain for any time from filling the vacancies which may occur at any annual day of election but the number of directors shall not in any case be less than five.

2. That the present directors and the directors for the time being of the company shall be at liberty if they shall think it expedient so to do to appoint as directors of the same company any one or more of the directors of any other company or society the business of which shall have been acquired by purchase or otherwise or which shall have been amalgamated or united with the business of the Albert Life Assurance Company under the power hereinafter contained provided that such director so appointed be a holder in his own right of 50 shares at least in the capital of the Albert Life Assurance Company and provided also that the number of directors so appointed shall not together with the then existing directors exceed the number of twenty-four.

3. That every director of the company appointed under the power or authority given in and by the last preceding clause or provision shall henceforth have all the like rights privileges and powers and be subject to the like rules regulations and provisions and be and be deemed considered and treated in all respects as a director elected by the proprietors.

4. That the directors for the time being of the company may at any time in the interval between the annual general meetings if they shall think it expedient so to do elect any additional director or directors not being a director or directors of any such other company or society as aforesaid or fill up any vacancy in the office of director provided that the number of directors for the time being be not increased to more than twenty-four by the exercise of this power and provided that no person shall be capable of being so elected a director of this company unless at the time of his election he shall be a holder of 50 shares at least in his own right in the capital of the company and shall have been a proprietor of the company

ALBERT SPECIAL RESOLUTIONS.

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for at least six calendar months and the director or directors so to go out of office at the annual general meeting next after his or their election.

5. That (subject and without prejudice to the appointment of any director or directors of the company under the respective powers or authorities hereinbefore given) the directors (other than the managing director) shall be elected by the proprietors.

6. And it is hereby further resolved and determined that the present directors and the directors of the company for the time being shall have full power and authority from time to time to acquire by purchase or otherwise the business goodwill and assets or any part of the business goodwill or assets of any other life assurance company or society or of any company or society for effecting assurances on lives or survivorships and for granting endowments and for purchasing or granting annuities life reversionary and other estates and interests real and personal and for advancing moneys on mortgage or other security or for any of those purposes or to amalgamate or unite the business of any such company or society with the business of the said Albert Life Assurance Company upon such terms and conditions as they shall think expedient and especially that the said directors shall have power to enter into contracts to be binding on the said Albert Life Assurance Company to pay and satisfy claims on and engagements of such other company or society and to grant compensations or employment to the officers and servants of such company or society and for the purposes aforesaid or any of them to make any arrangements and to enter into and rescind or modify any contracts or agreements in the name of the Albert Life Assurance Company and of the shareholders thereof.

E.

ALBERT ARBITRATION ACT, 1874.

 37 & 38 VICT. c. lviii.

An Act for making further provision for the settlement of the Affairs of The Albert Life Assurance Company by Arbitration, and for other purposes.

[Royal Assent, 30th June, 1874.]

WHEREAS by The Albert Life Assurance Company Arbitration Act, 1871 (in this Act called the Arbitration Act of 1871), it was recited (amongst other things) to the effect that it was indispensable for the purpose of settling the affairs therein described, and arranging or finally winding up the affairs of the Albert Company, that discretion should be placed in an Arbitrator specially constituted for the purpose, to determine the rights and settle the affairs of the companies therein named, and their creditors:

And whereas by the Arbitration Act of 1871, for the purpose of determining the matters thereby referred to arbitration, the Right Honourable Hugh McCalmont Baron Cairns was appointed the Arbitrator:

And whereas the Arbitrator appointed by the Arbitration Act of 1871 has proceeded in the reference, and has (among other things) caused notices to be published calling on all persons to bring in their claims against any of the companies subject to the Arbitration Act of 1871, and has directed the payment in full or in part of the amounts allowed to creditors establishing their claims against any of those companies, and has made calls on contributories of some of those companies, and has got in their assets or the greater part thereof:

And whereas in respect of some of the outstanding contracts of some of those companies claims have not been made, or the title of the claimants has not been proved, and various sums of money ordered in the liquidations of some of those companies to be distributed or to be returned as dividend, premium, or otherwise, remain unclaimed:

And whereas it is expedient that the closing of the several liquidations and the dissolution of those companies be expedited and facilitated, and that for that purpose provision be made for the absolute barring of claims and the final disposal of assets:

And whereas the objects aforesaid cannot be effected without the authority of Parliament, and the Arbitrator appointed by the Arbitration Act of 1871 has approved of the Bill for this Act:

May it therefore please your Majesty that it may be enacted and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same as follows; (that is to say,)

1. This Act may be cited as The Albert Life Assurance Company Arbitration Act, 1874.

2. This Act as far as may be shall be read and have effect with the Arbitration Act of 1871 as one Act.

3. In this Act—

“The Arbitrator” means the Arbitrator for the time being appointed by or under the Arbitration Act of 1871:

“The liquidators” means the joint official liquidator of the several companies in liquidation, appointed by and acting under direction of the Arbitrator:

“Assets” includes reversionary interests, loans on policies, and other securities, sums proved or claimed against estates distributable in any Court, or otherwise, arrears of calls, and other money, and all other property of any kind belonging to, or claimed by, or on behalf of, any of any of those companies:

“Balances” includes—

- (a.) Dividends allotted and directed to be paid to creditors of any of those companies, but not taken by them;
- (b.) Premiums received in the Court of Chancery on the term of being returned in certain events, but not taken in the Arbitration;
- (c.) Sums received from contributories for calls, and directed to be returned to them, but not taken by them;
- (d.) Sums received from contributories for calls, and not required for discharge of claims, but too small in aggregate amount to be divided among and returned to the contributories;
- (e.) Assets remaining unapplied.

4. The Arbitrator may, if he thinks fit, by order, appoint a day on which all claims arising on policies or otherwise, not brought in and proved, shall be barred, and the same shall, by virtue of that order and of this Act, be absolutely barred accordingly.

5. The Arbitrator may, if he thinks fit, direct the liquidators to dispose at prices and on terms approved by him of assets not got in, and any assignee thereof may sue for and recover the same in his own name, and hold the same for his own benefit, and as regards assets being legal debts or things in action, subsection six, of section twenty-five of The Supreme Court of Judicature Act, 1873, shall have effect, the liquidators being deemed the assignors for the purpose of that enactment.

6. The Arbitrator may direct the liquidators to pay into the Court of Chancery such balances not claimed by a day appointed by the Arbitrator, as he thinks fit.

The liquidators shall file in the Court a list, shewing the several component sums making up those balances, and the names, addresses, and descriptions of the several persons entitled thereto, as far as the same have been ascertained in the liquidation.

The list shall be conclusive evidence of the title of those persons to those several component sums.

The Court shall, from time to time, on application at Chambers, cause those several component sums (subject to payment of any proper costs or expenses), to be paid out to the persons entitled thereto, according to the list, or to their respective representatives or assigns.

7. The Arbitrator may direct the liquidators to pay to the respective Administrator-General of Bengal, Madras, and Bombay, such balances not claimed by a day appointed by the Arbitrator, as are payable in India, and as he thinks fit.

Each Administrator-General shall receive those balances, and shall hold and apply them for the purposes and according to the directions of this Act.

The liquidators shall deliver to each Administrator-General a list shewing the several component sums making up the balances paid to him, and the names, addresses, and descriptions of the persons entitled thereto, as far as the same have been ascertained in the liquidation.

The list shall be conclusive evidence of the title of those persons to those several component sums.

Each Administrator-General shall, from time to time, on demand, pay the several component sums making up the balances paid to him to the persons entitled thereto, according to the list, or to their representatives or assigns, subject to payment of any proper costs or expenses.

Each Administrator-General shall be entitled to receive and deduct a commission at the rate of five per centum on and out of each of the component sums making up the balances paid to him.

Subject to the provisions of this Act, each Administrator-General shall hold and dispose of the balances paid to him as nearly as may be, in all respects, as if the same were assets collected and distributable by him under the Act of the Legislature of India, relating to his office, and that Act (including the provisions thereof respecting assets having been in official custody for a certain period, without any claim thereto having been made and allowed), shall apply to the balances paid to him under this Act accordingly.

8. If and as far as the provisions of this Act authorizing payment into the Court of Chancery, or to an Administrator-General, are not applicable, or are for any reason not applied, the Arbitrator may deal with and dispose of the balances in such manner as he in his discretion thinks most fit, equitable, and expedient.

9. All costs, charges, and expenses preliminary to, and of, and incidental to, the preparing of, applying for, obtaining, and passing of this Act, shall be paid out of such money, subject to the Arbitration Act of 1871, as the Arbitrator directs.

F.

ALBERT: BONUS NOTICE OF 1863.

[B. N.] Policy No. , on the life of .

CIRCULAR TO PERSONS INTERESTED IN LIFE POLICIES EFFECTED IN LONDON OR
THROUGH AN AGENT.

ALBERT MEDICAL AND FAMILY ENDOWMENT LIFE ASSURANCE COMPANY,

7, Waterloo Place, Pall Mall, London, S.W.

March, 1863.

SIR,—I have the pleasure to send you, by desire of the Board, a Report of the proceedings at the Annual Meeting of the proprietors of this company, held on the 24th December last, by which you will perceive that a further allotment of the surplus profits of the company has been made to the assured.

The share pertaining to the above-mentioned policy may be applied in either of the following ways:—

- 1stly. In adding to the amount assured, when payable, the sum of £ s. d.
- 2ndly.* In the present payment of £ s. d.
- 3rdly.* In reducing the premiums payable during the three years subsequent to this year; or
- 4thly.* In reducing all premiums payable subsequent to this year.

I shall be obliged by your informing me which of the above modes you select, and a form is enclosed for that purpose. I may state, for your guidance in making your selection, that the reduction of premium under No. 3 would be somewhat more than one-third of the amount named under No. 2. The reduction under No. 4 would, of course, be much smaller, and shall be determined if you wish it.

Should I not hear from you before the 30th June next, it will be assumed that you adopt the first of the preceding modes, and the sum named under No. 1 will accordingly be added to the sum assured.

In conclusion, I desire to call your attention to the gratifying fact that the new business of the company (which, as per annexed report, recently reached in one year the unprecedented amount of 2,235 policies, assuring £845,622, and yielding in annual premiums £34,290) is still progressing very satisfactorily, and at a rate which must materially augment the future profits of the company.

I am, Sir,

Your obedient Servant,

FRANK EASUM,

Secretary.

To

(Or the present holder of the policy.)

* Not any of these options can be exercised in the case of a mortgaged policy without the concurrence of the mortgagee or mortgagees.

[Form inclosed.]

APPENDIX F.

[Form inclosed.]

I prefer the * mode stated in your circular of applying the share
of profit pertaining to my Policy No. .

Your obedient Servant,

..... } Signature of the original
..... } policy-holder.
..... Address.

* Please to insert the word 'first,' 'second,' third,' or 'fourth,' as the case may be; and observe that should you select any other than the first mode, it will be necessary, if the assurance were not granted to you originally, to establish your title to it; or, if you have mortgaged it, that the mortgagee or mortgagees should sign the following memorandum :

I assent to this arrangement, and authorize its completion without further reference to myself.

..... } Signature of mortgagee in case
..... } the policy has been mortgaged.
..... Address.

[The circular was printed on the first page of a sheet of paper ; on the second page was a prospectus of the Albert, Medical, and Family Endowment Company ; on the third page was the report of the proceedings of the meeting of that Company referred to in the circular.]

G.

ALBERT: REPORTS OF DIRECTORS.

30 June, 1859.

At the Annual General Meeting of Proprietors holding ten shares and upwards, convened for 12 for 1 o'clock this day, for the purpose of receiving the directors' and auditors' reports on the accounts and business of the company to the end of 1858, and of electing

The secretary having read the circular convening the meeting, the managing director proceeded with the report as follows :

REPORT OF THE BOARD OF DIRECTORS FOR THE YEAR 1858.

In making their report for the year ending the 31st of December, 1858, the directors congratulate the shareholders upon the result of the operations since the last periodical meeting, which include the acquisition of the extensive life business of the Bank of London and National Provincial Insurance Association, and they have the pleasure of calling the attention of the shareholders to the statements drawn up as required by the company's deed of settlement, consisting of—

1st. The receipts and disbursements for the year 1858 exclusively.

2nd. Particulars of the company's funds and property on the 31st December, 1858.

* * * * *

The amount of life assurances subsisting with the company on the 31st of December last (including the business transferred by the Bank of London and National Provincial Assurance Association), was as follows :—

			£	s.	d.
First or non-participating fund	..	..	626,347	0	0
Second or participating fund	..	..	2,578,472	0	0
Total	..	..	£3,204,819	0	0

* * * * *

The directors have now to bring under the notice of the shareholders the accession to the company's business by the transfer thereto of that of the Bank of London and National Provincial Insurance Association, the premiums derivable from which have added about £60,000 a year to the income of the company.

The transfer in question took place in October, and, amongst the many advantages already secured, the agency staff of the company has been augmented by about 1000 representatives, the benefit of whose exertions is evinced by the increasing business of the office, which at the present time is increasing at the rate of from £15,000 to £20,000 a year.

By the agreement entered into between the two companies, the shareholders of

Directors report to the shareholders that they have recently
the Medical, Invalid, and General Life Assurance Society,
income of the Albert is raised to £220,000 a year.

Acquisition has advanced the company to a prominent place
among life assurance institutions, and introduced many active and
able, besides placing the company by the large transfer of the large
business of the Medical Society at almost the head of offices transacting
the business in our East Indian possessions.

The terms of the agreement entered into with the Medical, Invalid, and General
Life Assurance Society having provided that the Albert shall be distinguished
by a new name or title, that of the Albert and Medical Life Assurance Company
has been adopted, and the total funds and property of the company consist of the
following:

	£	s.	d.
Government and bank stock	100,962	4	1
Mortgages on real property	124,290	0	0
Bonds and other investments	105,818	19	0
Cash at branch banks, agents' balances, current interest, premiums due, but paid after 31st December, freehold property, and other assets	77,044	9	11
Life interests and reversions	38,984	7	3
Value of policies with other offices	13,418	17	7
Cash at bankers (on deposit and current accounts) ..	14,614	16	10
	<u>£475,183</u>	<u>14</u>	<u>8</u>

The audited accounts referred to in the report having been then read—

It was moved by the Chairman, seconded by Mr. Clennell, and carried unani-
mously:

That the reports of the auditors and directors upon the accounts and business
of the company to the end of 1859 be received and adopted.

28 November, 1861.

THE directors beg to inform the proprietors that the business of the Family
Endowment and Kent Mutual Life Assurance Societies have been acquired in
the present year (1861), and, with a view of better identifying the company with
the policy-holders, agents, and other connections of the Family Endowment
Society, their names have been added to the company's former title of Albert and
Medical. In procuring the business of the Family Endowment Society, the com-
pany has obtained that society's Indian business and influence, a most important
addition to the Indian business and influence of the Medical and Invalid Society
previously transferred to the company, and, in reference to the company's Indian

business, the directors are happy to inform the proprietors that it is proceeding very satisfactory.

By the acquisition of the above-mentioned businesses, the income of the office, derived from premiums only, is now upwards of £250,000 a year, and the assets of the company beyond £700,000, the particulars of which are as follows :

	£	s.	d.
Government bank stock and East Indian Com- pany's paper	188,107	17	6
Mortgages	171,029	19	7
Bonds and other investments	155,993	8	9
Cash at branch banks, agents' balances, cur- rent interest, premiums due but paid after 31st December, freehold property and other assets	103,242	7	6
Life interest and reversions	59,809	18	6
Value of policies with other offices	14,040	18	6
Cash at bankers on deposit and current ac- counts	26,424	0	8
	<u>£718,647</u>	<u>13</u>	<u>0</u>

* * * * *

The audited accounts referred to in the report having been read,
It was moved by the Chairman, seconded by Mr. Clennell, and carried unani-
mously :

That the reports of the auditors and directors upon the accounts and
business of the company, to the end of 1860, be received and adopted.

24 December, 1862.

The directors are desirous of calling the attention of the proprietors to the very large amount of the company's new business, greater even than they themselves anticipated, whereby the advantage of the transfers which have taken place of other businesses to this company is made apparent.

With regard to the Indian business, the transfer from the Medical, Invalid, and General and Family Endowment Societies, has been effected without difficulty, and the fresh business done since the new arrangements came in force proves that the public in India feel the same confidence in the present Association as has been evinced so remarkably in the extent of business hitherto done by the Medical, Invalid, and General and Family Endowment.

The directors see no reason to expect other than a continuance of the progress of the company in India, and they look forward to an increasing business from that country.

* * * * *

1865.

THE directors beg leave to submit to the proprietors a report of the business transacted by the company during the year 1864.

In compliance with the requirement of the deed of settlement the accounts have been prepared and audited, and are as follows:

1st. The general balance sheet as on the 31st December, 1864.

2nd. The income account of receipts and payments for the year 1864.

* * * * *

It is gratifying to the directors to be able to add, that during the last six months of the present year the new premiums have been gradually increasing. The businesses of the Western Assurance Society and the Indian Laudable and Kent Mutual Assurance Society have been recently acquired by this company: an additional income has accrued thereby of £80,000 per annum, making our present premium income nearly £353,000 a year.

* * * * *

The audited accounts referred to in the report having been read:

It was moved by the Chairman, seconded by W. Church, Esq., and carried unanimously:

That the reports of the auditors and directors upon the accounts and business of the company to the end of 1864, be received and adopted.

H.**BANK OF LONDON: AGREEMENT FOR AMALGAMATION.**

AN AGREEMENT made the 7th day of October in the year of our Lord 1858 between Sir Henry Muggeridge of John Cumberland of and William Anthony Purnell of three of the directors of the Bank of London and National Provincial Insurance Association (hereinafter called the association) contracting on behalf of the said association under the authority and direction of the board of directors of the one part and William Beattie of James Croudace of and George Raymond of three of the directors of the Albert Life Assurance Company (hereinafter called the company) contracting on behalf of the said company under the authority and direction of the board of directors of the said company of the other part :

Whereas a proposal was made and entertained for the transfer of the business of the association to the company and thereupon a full investigation has been made by or on behalf of the company into the affairs and position of the association and the company being satisfied upon such investigation an agreement has been come to between the board of directors of the association and the company respectively subject to the approval and confirmation of a general meeting of the association as hereinafter mentioned that the association shall sell transfer and dispose of all their business property rights and liabilities that the company shall purchase and take the same except so much of the business property rights and liabilities as relates exclusively to insurance against loss or damage by fire and shall make arrangements for the taking and disposal of the portion so excepted in the manner and upon the terms and conditions herein expressed and that the consideration or price shall be the full amount of the paid-up capital of the association to be paid by the company in money or shares in the manner and at the times hereinafter mentioned :

And whereas the board of directors of the association have by a minute or resolution duly made by them authorized and empowered the said Sir Henry Muggeridge John Cumberland and William Anthony Purnell to execute these presents on behalf of the said board and the board of directors of the company have by a minute or resolution duly made by them authorized and empowered the said William Beattie James Croudace and George Raymond to execute these presents on behalf of the said last-mentioned board :

Now therefore it is agreed between the parties hereto on behalf of such association and company respectively as follows—

1. The business of the association (except so far as the same relates to insurance against loss or damage by fire or the risk of such loss or damage) and all the goodwill benefit and advantage of such business except as aforesaid shall on and from the 6th day of September 1858 be transferred and assigned or be deemed to have been transferred and assigned to the company and shall thenceforward belong to and be carried on and conducted by the company and the association and the board of directors thereof shall on and from that day cease to

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carry on such business except for the benefit of and in trust for the company in the manner hereinafter mentioned.

2. All the moneys including debts or balances due or coming to the association from agents or otherwise and all other property credits securities claims rights and effects of the association (except those immediately connected with the said business of insurance against loss or damage by fire) shall on and from the same 6th day of September 1858 become or be deemed to have become the property of the company but notwithstanding this change of property the same shall until the approval and confirmation of this agreement as hereinafter mentioned remain in the possession of the association for the purposes and upon the conditions hereinafter mentioned and after such approval and confirmation the same shall except as hereinafter mentioned be transferred and assigned to and pass into the hands or possession of the trustees hereinafter mentioned and shall be retained by them for the purposes and upon the conditions hereinafter expressed until the due performance by the company of this agreement as hereinafter mentioned.

3. All the debts engagements liabilities and risks of the association or of the present or any other trustees of the association or any of them as such trustees or trustee or of the board of directors of the association or of any officers thereof on behalf of the association existing or in force up to or at the 6th day of September 1858 or thereafter arising or resulting from or out of any act or transaction of the association or of such trustees trustee or board of directors on account thereof and all claims and demands against the association or the trustees thereof or any of them as such trustees or trustee or against any director or proprietor of the association in respect of any act transaction or omission of the association or of the board of directors thereof whether now known or communicated to the company or not and whether first made before the said 6th day of September or not and although the same may have arisen from some mistake inaccuracy defalcation of agents or other default not being a fraud of the association their directors or officers except such debts engagements liabilities risks claims and demands as relate solely to the business of insurance against loss or damage by fire (for which provision is hereinafter made) shall be paid performed borne undertaken and met by the company and the company shall at all times save harmless and keep indemnified the association and all trustees thereof and the board of directors and all other proprietors thereof from and against the same and from and against all actions suits and proceedings in respect thereof and all costs and charges connected therewith but always excepting fraudulent default.

4. In particular all the benefit and advantage of and all rights power claims and demands of the association or of the then or present board of directors or trustees of the association from or under the three several agreements mentioned in the first schedule hereto

5. All premiums and other sums of money after the said 6th day of September 1858 paid or payable upon or in respect of policies of assurance (except those relating to insurance against loss or damage by fire) or upon or in respect of endowments grants or engagements of the association in force on that day shall subject to the confirmation of this agreement by the shareholders of the association as hereinafter mentioned be received by and be the property of the company and all risks engagement and liabilities upon or in respect of all such policies endowments grants or engagements and all charges and expenses connected there-

with shall be borne and paid by the company and the holders of all such policies shall be entitled to the same bonuses rights and privileges in all respects as if they had been policies granted by the company on the day on which they respectively bear date.

6. The association and the company shall respectively use their best endeavours to procure the several persons holding or entitled to policies endowments grants deeds of covenant or other engagements of the association or of any of the companies or associations with whom the several agreements in the first schedule were made to accept in exchange or in renewal policies endowments grants deeds of covenant or engagements of the company and the company will at their own expense on the application of persons interested therein grant execute and deliver such substituted or renewed policies endowments grants deeds of covenant or engagements to the several persons willing to accept the same.

[7. Delivery of books and papers.]

8. The association and their board of directors and officers will afford all reasonable and proper information and aid to the company

9. The company shall within three calendar months after the date of this agreement find and procure some good and substantial company or association carrying on the business of insurance against loss or damage by fire which will take upon themselves and to which shall be transferred and assigned so much of the business of the association as relates to insurance against loss or damage by fire or the risk of such loss or damage.

[10, 11. Fire. 12. Offices.]

13. After the approval and confirmation of this agreement each proprietor of and in the association shall be entitled either to be paid in money at the times hereinafter mentioned the full amount without any abatement or deduction of all sums which may have been paid up or advanced upon the shares of which he is the proprietor before the said 6th day of September 1858 (of which amount and of the number of shares held by him the register of proprietors shall be evidence) or at his option but subject to the approbation of the company to have allotted and issued to him in lieu of all or any part of such amount so many shares in the company of £20 each and upon each of which £3 shall be credited and taken as having been paid as that the amount so credited as paid thereon shall be equal in the aggregate to the sum in lieu whereof he has accepted such shares Provided that the option of taking shares shall not (except by consent of the board of directors of the company) be exercised after the 31st day of December 1858 Provided also that such option shall not be exercised as to any fractional part of Three pounds.

14. The company shall and will on the 1st day of January 1860 pay to each proprietor in the association or his representatives holding 20 shares only or a less number than 20 shares in the association the amount in cash to which he may be entitled under the preceding article and shall and will pay to each proprietor in the association holding more than 20 shares the amount in cash to which he may be in like manner entitled by three equal instalments payable respectively on the 1st day of January 1860 the 1st day of January 1861 and the 1st day of January 1862 and shall and will also pay to each proprietor or his representatives half-yearly on the 1st day of January and the 1st day of July in each year interest at the rate of £5 per cent. per annum (free from income tax)

BANK OF LONDON: AGREEMENT FOR AMALGAMATION. liii

upon so much of the whole amount in money to which he may be entitled as may for the time being be outstanding or unpaid the first of such half-yearly payments being made on the 1st day of January 1859 and being for half a year's interest from the 30th day of June last and shall and will make all such payments at the office of the company in Moorgate Street or some other place to be notified through the post by the company to each proprietor seven days at least before any day for payment of an instalment and shall and will bear all the costs and expenses of and attendant upon such payment and distribution of such principal and interest moneys respectively And shall also pay all the costs of and attending the keeping up the requisite office for registering the transfer and transmission of shares in the association until the whole of the said principal moneys and interest are fully paid Provided that no further interest shall run or accrue upon any part of such amount after it shall have become payable to any proprietor or his representatives unless the same shall remain unpaid by the fault of the company.

15. The company shall and will subject to the provisos above mentioned in that behalf cause every proprietor exercising the option of taking shares and of whom they may so approve to be entered on the register of proprietors of the company as the holder of the shares to which he may be entitled and as having paid £3 upon each of them and every proprietor so registered shall in lieu of the interest which he would have been entitled to from the 24th day of June last be entitled to participate in and receive all dividends and profits of the company as if he had been and been registered as a proprietor of the company on and from the 30th day of June last and every notice to a proprietor shall be according to his residence or address as apparent from such register.

16. Upon the approval and confirmation of this agreement the then manager sub-manager and actuary of the association shall be continued in their employments by or employed as officers of the company at an annual salary or rate of remuneration equal or as nearly as the circumstances of the case will admit equivalent to the present annual value or proceeds of the appointments now held by them respectively in the association it being in the option of the party on either side to determine any such appointment or employment at any time by giving notice to the party on the other side and the company in that case being bound to make and pay to such officer a fair and reasonable compensation for the loss by him of such appointment and the solicitor the medical officer and the other officers of the association (except the manager sub-manager and actuary) or such of them as shall not receive from the company appointments upon the staff of the company upon the same or equivalent terms as those they respectively held in the association shall be entitled to and shall receive one year's salary from the time at which the company shall give them respectively notice of not requiring their services.

17. The company shall forthwith on the execution hereof deposit at the branch office of the London and Westminster Bank in St. James's Square in the names of the trustees hereinafter mentioned the several securities mentioned in the second schedule hereto or other equivalent securities to be approved by the association and representing in the whole the value of £50,000 and such securities shall remain in deposit by way of security or guarantee for the due performance by the company of this agreement and be held and retained by the trustees either until this agreement shall have been rejected by a general meeting of the asso-

ciation as hereinafter mentioned or until such time as the company shall have fully paid and satisfied all principal money and interest and issued and entered on the register all shares to which the proprietors in the association are respectively entitled under this agreement when such securities shall be returned and handed back by the trustees to the company provided that such securities or any of them may at any time be inspected and copies thereof taken by any person on behalf of the company and that the company may at any time remove or take away any such securities on their first depositing the value of principal money represented by such security either in cash or by an equivalent security to be approved by the trustees according to clause No. 20 of this agreement.

18. All the freehold and leasehold property of the association and all their securities for the payment of money consisting of mortgages bonds life interests and reversions loans to policy holders on half credit premiums and all policies connected with or forming part of such securities and all other deeds and instruments of the like kind and the monies thereby secured or recoverable by means thereof and all rights claims and demands upon or in respect of the same and also all the cash at the bankers of the association and other money in their possession or power except debts or balances due or coming to the association from agents or otherwise shall after the approval and confirmation of this agreement as hereinafter mentioned be duly transferred assigned and made over by all such deeds and assurances as may be necessary or proper in that behalf to the trustees hereinafter mentioned to be held and retained by them by way of security or guarantee until such time as the company shall have fully paid and satisfied all principal money and interest and issued and entered in the register all shares to which the proprietors of the association respectively may be entitled under this agreement and such trustees shall on behalf of the association retain and keep

[19—25. Powers and duties and appointment of trustees.

26. Arbitration.

27. Confirmation by general meeting.

28. Provisional continuance of business.

29. Costs.]

In witness, &c.

SCHEDULE I. states parties to agreements referred to—

3rd September 1857. Anchor Assurance Company and the Association.

2nd November 1857. Durham and Northumberland Life Fire Mariners and General Provident Association and the Association.

25th February 1858. Merchants and Tradesman's Mutual Life Assurance Society and the Association.

SCHEDULE II. contains a list of securities referred to.

I.

BANK OF LONDON: CIRCULAR TO AGENTS ON AMALGAMATION.

ALBERT LIFE ASSURANCE AND GUARANTEE COMPANY,
 7, Waterloo Place, Pall Mall, London,
 10th November, 1858.

SIR,—Referring to the annexed communication from the Bank of London and National Provincial Insurance Association, I have the pleasure of apprising you of your having been appointed to the agency of the Albert Company.

The amalgamation must be advantageous to your friends, the assured, as well as to yourself, and I will, as speedily as possible, send you fresh papers, but until you receive the new forms, be pleased to use those on hand.

Anticipating an early transmission of proposals,

I am, Sir,

Your obedient servant,

HENRY WILLIAM SMITH,
 Secretary.

BANK OF LONDON AND NATIONAL PROVINCIAL INSURANCE ASSOCIATION,
 Threadneedle Street,

10th November, 1858.

DEAR SIR,—I beg to inform you that by virtue of a resolution unanimously passed at an extraordinary general meeting of the shareholders, held on the 20th ult., the business of the Bank of London and National Provincial Insurance Association is now amalgamated with the Albert Life Assurance and Guarantee Company. The shareholders present personally and by proxy at that meeting represented upwards of three-fourths of the entire capital of the association.

In accordance with the resolution above mentioned, the united life business will for the future be carried on by the Albert Life Assurance and Guarantee Company, at No. 7, Waterloo Place, Pall Mall, and I have to request that you will, on and after the 1st of January, 1859, correspond with and account to Henry William Smith, Esq., their secretary, for all agency transactions then due or accruing due, it being the intention to remove the business of our association to Waterloo Place at about that date.

I have arranged for securing the continuance of your agency, and you will shortly be called upon by a representative of the Albert Company.

The fire business will be transferred by the Albert, with the concurrence of

this association, to an established office, and I may add that arrangements for that purpose are now in active progress, of the result of which you will be advised in due course. Your agency in this department will also be continued by the absorbing fire office.

It will no doubt create surprise that the directors of our association should have deemed it necessary to transfer so flourishing a business, but in order that no misapprehension may exist as to the cause, and that you may be satisfied that the interests of the policy-holders have been considered, I beg to refer you to the subjoined extracts from circulars addressed to the shareholders.

The agreement entered into with the Albert Company provides that the policy-holders of our association shall be entitled to participate in the bonus of that company becoming due at the close of the present year.

A renewal premium receipt has been specially prepared, and will be adopted in future, by which the Albert Company will cover the risk, under the existing policies of the Bank of London and National Provincial Insurance Association; but whenever required such policies may be exchanged for those of the Albert Company. The Albert Company was established in 1838.

I am, dear Sir,

Yours faithfully,

EDMUND CLENCH,

Manager and Secretary.

*Extract from Circular addressed by the Directors to the Proprietors, dated
October 9, 1858:—*

"It will be in the recollection of the proprietors that at the adjourned general meeting, held on the 29th May last, it was referred to a committee of shareholders to 'confer and advise with the directors, with all power to make all necessary inquiries as to the past and future direction and management of the company, with instructions to report to the shareholders at a special meeting to be called for that purpose.' The committee then constituted have since devoted themselves unremittingly to the object of their appointment, but with little probability that their efforts would lead to unanimity in the management, or even to that harmonious action which is indispensable to the satisfactory working of the association, and without which no undertaking, whatever may be its position or prospects, can hope to prosper.

"Under these circumstances, the directors have taken into their serious consideration a proposal which has been submitted to them by the Albert Life Assurance Company, for the transfer of the business to that company, upon their undertaking to repay the shareholders of the association at par, and it has been determined, after mature deliberation, that it will be more conducive to the interests of all parties to transfer the business of the association to another company, than to carry it on in the prospect of divided and unharmonious councils."

[*Extract*

BANK OF LONDON: CIRCULAR ON AMALGAMATION. lvii

Extract from Circular addressed by the Committee of Shareholders to the Proprietors, dated October 8, 1858 :—

“ We have looked carefully at this offer made by the Albert Company, which our directors accepted, but which was entertained by us only on condition that the terms of the agreement should be such as we could fully approve.

“ Before therefore giving our full assent, and always subject to your approval, we required every stipulation that was thought important for the protection of your interests to be embodied in the agreement ; and as we feel assured you would consider that it is not merely your personal interests that should be regarded, but that you are placed under a moral obligation also to see that the future-interests of the policy-holders be amply secured, we have caused an examination to be made, by a well-known accountant, of the books of the Albert Company, together with the last balance-sheet ; the last actuarial valuation of the company has also been examined by us, that we might be assured of their ability to fulfil the terms of such agreement.

“ That agreement will be exhibited for your approval ; it affords the best security we can obtain for effecting the object intended, and we think sufficient protection for your interests, as well as the interests of the policy-holders, to induce us to recommend you to confirm the same.”

K.

MEDICAL: AGREEMENT FOR AMALGAMATION.

ARTICLES OF AGREEMENT made and entered into the 21st day of September 1860 between Benjamin Phillips of Edward Doubleday of Lieutenant Colonel Henry Doveton of George Gun Hay of George Gordon Macpherson of Sir Thomas Phillips of Thomas Stevenson of Charles Grenville Mansel of and James Wishaw of directors of the Medical Invalid and General Life Assurance Society of the one part and William Beattie of Esquire M.D. the Honorable Swynfen Thomas Carnegie of James Croudace of Swynfen Jervis of William King of George Goldsmith Kirby of James Nichols of The Right Honourable Lord George Paulet of George Raymond of and Robert Whitworth of directors of the Albert Life Assurance and Guarantee Company of the other part:

Whereas at a board meeting of the directors of the said Albert Life Assurance and Guarantee Company held on the 11th day of July 1860 resolutions were passed in the words and figures following (that is to say) Resolved that this company do and they hereby offer the Medical Invalid and General Life Assurance Society to take upon themselves the claims and engagements of the Medical Invalid and General Life Assurance Society and to pay off the shareholders of the same society upon the terms and conditions following (that is to say):—

1. That from and after the day upon which this company shall acquire the business of the Medical Invalid and General Life Assurance Society all premiums and other moneys paid or payable upon or in respect of policies theretofore issued by the Medical Invalid and General Life Assurance Society shall belong to this company;
2. That the shareholders in the Medical Invalid and General Life Assurance Society shall receive a present payment in cash of £5 for each of their shares (namely) £2 16s. per share from the said Society and £2 4s. per share from this company or the same shareholders shall to the extent of the shares held by them have the option of taking five shares in this company on which £3 each share shall be considered to have been paid for every three shares in the said society;
3. The Life Assurance Fund of the Medical Invalid and General Life Assurance Society taken at the sum at which the same may stand in their books at the time the said company shall acquire the business of the Medical Invalid and General Life Assurance Society including all premiums interest and debts then due to the same society and unpaid except the part thereof hereinafter mentioned after paying and satisfying all immediate claims and demands arising from assurances annuities

endowments or other contracts or engagements shall be transferred to six trustees resident in England (each company appointing three) upon and for the trusts and purposes thereafter mentioned and such part of the said Life Assurance Fund as shall consist of investments or monies in India shall be transferred to three trustees resident there and approved of by both companies ;

4. That all claims in respect of policies in the Medical Invalid and General Life Assurance Society occurring by deaths after four o'clock P.M. upon the day on which the Albert Company shall acquire the business of the Medical Invalid and General Life Assurance Society shall be discharged by this company ;
5. That policy-holders in the Medical Invalid and General Life Assurance Society shall be invited to substitute for their subsisting policies other policies to be issued by this company and which substituted policies shall be deemed and considered to be of the dates of the original policies and shall be of the same amount and subject to the like annual or other periodical payments as those policies for which they shall be substituted and which substituted policies this company shall grant to all persons willing to accept the same ;
6. That the persons entitled to participate in profits and who shall accept such substituted policies or who shall otherwise accept engagements by this company instead of preserving the rights that shall belong to them as policy-holders in the Medical Invalid and General Life Assurance Society shall be entitled to share in the next and in all subsequent bonuses to be declared by this company in the same manner as if their policies had been originally issued by this company ;
7. That the policy-holders in the Medical Invalid and General Life Assurance Society who shall decline to accept such substituted policies shall be entitled to keep on foot their present policies by paying the premiums thereon to this company who shall undertake the liabilities of the said Medical Invalid and General Life Assurance Society in respect of such policies ;
8. That the said Life Assurance Fund shall be held by the said trustees upon trust for the term of ten years from the date hereof for securing the obligations of the Medical Invalid and General Life Assurance Society in respect of policies granted by them but a proportion of the said trust funds shall be transferred from time to time to this company as such obligations cease either by the substitution of new policies or by other means and at the expiration of the said ten years the remainder (if any) of such funds shall be transferred to this company and whether any of the same obligations shall be then subsisting or not ;
9. That this company shall discharge all claims upon the Medical Invalid and General Life Assurance Society and indemnify the same society against all obligations of every kind into which it may have entered except immediate claims and demands arising as aforesaid and which are to be paid by the Medical Invalid and General Life Assurance Society ;

10. The compensation (if any) to be received in respect of the losses of the Medical Invalid and General Life Assurance Society occasioned by the Mutiny in India shall belong to the Medical Invalid and General Life Assurance Society and be divisible in the following manner (that is to say) one-third part shall belong to the shareholders and the remaining two-third parts to the existing policy-holders who would have been entitled to a bonus in 1858 had any been then declared. Provided nevertheless that if such two-third parts exceed the bonus declared in 1853 such excess shall belong to this company;
11. That the directors of the Medical Invalid and General Life Assurance Society shall be entitled to be directors of the company. That the medical officers of the said society including Dr. Farr shall be entitled to be medical officers of this company. That the auditors shall be employed at their present rate of remuneration or be compensated. That the bankers of the said society (Messrs. Hopkinson and Company) shall be one of the bankers of this company. And the solicitor of the said society (R. R. Sadler esquire) shall be one of the solicitors of this company. That the secretaries and staff of the chief office and Indian Branch shall be employed by this company at their present salaries or at the option of this company be compensated should their services not be required;
12. That a committee of the directors of the Medical Invalid and General Life Assurance Society to be at liberty to investigate the character of the securities on which the funds of this company are invested;
13. That this company shall be distinguished by a new name or style to be approved of by both companies.

And a second set of resolutions were passed in the words and figures following that is to say—

1. That such of the directors of the Medical Invalid and General Life Assurance Society as may be unwilling to become directors of this company shall receive compensation from this company at the following rate (videlicet) £1500 the chairman and £1100 each of the other directors and that the directors of the said society who shall become directors of this company shall in case of retiring from the board of directors of this company at any time within three years from the date of the amalgamation receive from this company a similar compensation or in the event of their death within such period of three years their legal representatives shall be entitled to receive from this company the same amount of compensation;
2. That the medical officers of the said society who shall not be willing to become medical officers of this company shall receive from this company a compensation of £1000 each and that the medical officers of the said society who shall become medical officers of this company shall in case of retiring from the medical staff of this company at any time within the said term of three years receive from this company a similar compensation or in the event of their death within the said term of three years their legal representatives shall be entitled to receive from this company the same amount of compensation;

3. That the four auditors of the said society shall in case they shall not be employed by this company be entitled to receive from this company a compensation of £300 each;
4. That Dr. Farr shall receive from this company a compensation of £1000 in respect of one moiety of his full salary of £200 per annum and be employed by this company and receive a salary of £100 per annum;
5. That the accountant (Mr. W S A Cooper) shall be employed by this company as one of its accountants at a salary of £300 per annum and if his services should be dispensed with within three years for any other cause than misconduct he shall be entitled to receive from this company a compensation equal to two years' salary;
6. That the clerks and servants of the chief office and Indian branch of the said society shall be employed by this company at the same salary as each of them is or may be entitled to receive under existing arrangements with the said society and if within three years the services of all or any of them shall be dispensed with for any other cause than misconduct the person whose services shall be so dispensed with shall be entitled to compensation upon the following scale (videlicet) Such of them as shall not have been five years in the service of both companies together (that is to say) reckoning the period of service in each company to be paid one year's salary as compensation Such as shall have been more than five years and less than seven years to be paid one and a-half year's salary as compensation And such of them as shall have been more than seven years to be paid two years' salary as compensation :

And whereas at a special general meeting of the proprietors of the said Medical Invalid and General Life Assurance Society held on the 29th day of August 1860 after the hereinbefore recited resolutions passed by the directors of the said Albert Life Assurance and Guarantee Company at the said board meeting held on the 11th day of July 1860 and also the following addition to paragraph 8 of the first set of the said hereinbefore recited resolutions namely "The Life Assurance Fund is to include all interest and dividends arising therefrom during the continuance thereof and the costs and expenses of the trustees are to be borne by the fund The portion of the trust funds to be from time to time transferred to the company shall be settled by an actuary to be appointed by the trustees" had been respectively read it was resolved that upon the dissolution of the said society the proposals contained in the said several resolutions of the said Albert Company then read with the aforesaid addition to the said eighth paragraph of the first set thereof should be accepted and it was at the same special meeting of the proprietors of the said Medical Invalid and General Life Assurance Society further resolved that pursuant to the terms of their deed of settlement the said society should be dissolved:

And whereas at a board meeting of the directors of the said Albert Life Assurance and Guarantee Company held on the 19th day of September 1860 it was resolved that the said addition to the eighth clause of the said first set of resolutions should be and the same was thereby adopted and confirmed:

And whereas at a board meeting of the directors of the said company held on the 19th day of September 1860 a draft of these presents was read and approved

and it was resolved that the engrossment of these presents should be executed by the directors of the said company :

And whereas at a board meeting of the directors of the said Medical Invalid and General Life Assurance Society a draft of these presents was read and approved and it was resolved that the engrossment of these presents should be executed by the directors of the said Society :

NOW THESE PRESENTS WITNESS that it is hereby mutually and reciprocally agreed between and by the parties hereto that all and singular the stipulations acts and things agreed to by the hereinbefore recited resolutions shall be well and truly fulfilled performed and done :

And particularly it is hereby agreed that the business of the said Medical Invalid and General Life Assurance Society shall be deemed and become and be the business of the said Albert Life Assurance and Guarantee Company on the 21st day of September 1860 being the day on which the second special general meeting of the proprietors of the said Medical Invalid and General Life Assurance Society is appointed to be held for the purpose of confirming the hereinbefore recited resolution for dissolving the same Society or in case such meeting shall be adjourned then on the day of such adjournment And that the payment to the shareholders in the said Medical Invalid and General Life Assurance Society of £5 for each of their shares mentioned in the second paragraph of the said first set of the said recited resolutions passed at the said board meeting of the directors of the said Albert Life Assurance and Guarantee Company shall become due on the said 21st day of September 1860 or in case such meeting shall be adjourned then on the day of such adjournment together with interest at the same rate and upon the same sum as has hitherto been paid by the said Medical Invalid and General Life Assurance Society from the last payment of interest and be paid with interest upon the said £5 for each share at the rate of £5 per cent. per annum to be computed from the said 21st day of September 1860 or in case the said meeting shall be adjourned then from the day of such adjournment to the day of actual payment or the day to be appointed by the said Albert Life Assurance and Guarantee Company for such payment (such last-mentioned day being within four months from the day of the date hereof whichever shall first happen) such last-mentioned interest to be paid exclusively by the said Albert Life Assurance and Guarantee Company Provided nevertheless that nothing hereinbefore contained shall in any way prevent the shareholders from being entitled to demand payment of the said £5 per share and interest immediately after the said 21st day of September and that a further formal deed shall be entered into and executed for completely and minutely effecting the several purposes agreed to by the said resolutions and these presents Provided always and it is hereby declared that if the aforesaid resolution for dissolving the said Medical Invalid and General Life Assurance Society passed at the said special general meeting of the proprietors of the same Society held on the 29th day of August 1860 shall not be confirmed at the second special general meeting appointed to be held on the 21st day of September 1860 for the purpose of confirming or rescinding the same or in case the said meeting shall be adjourned then on the day of such adjournment then these presents and everything herein contained shall be absolutely void anything hereinbefore contained to the contrary notwithstanding :

In witness &c.

L.

MEDICAL: CIRCULAR ON AMALGAMATION.

MEDICAL INVALID AND GENERAL LIFE ASSURANCE SOCIETY.

25, Pall Mall, London, S.W.

1st October, 1860.

SIR,—I beg to inform you that in pursuance of the power of the deed of settlement of this society and of resolutions passed at two special meetings of proprietors, the directors have entered into an arrangement with the Albert Life Assurance Company, in accordance with which the affairs of both companies are intended to be conducted by the continuing company under the style of the Albert and Medical Life Assurance Company, by whom all the engagements of this society will be satisfied.

Under this arrangement the accumulated funds of this society will be invested to meet its liabilities, whilst its policy-holders will enjoy the additional security afforded by the combined income arising from the amalgamated business of both companies, amounting to more than £220,000 annually, and the further guarantee of a numerous proprietary of undoubted respectability.

The Albert Company has agreed to issue policies in exchange for those of this society at the same rate of premium as that now payable on the policies effected in this office, without any alteration of the terms or conditions of the present policies; and if any policy-holder should have assigned his policy by any legal instrument in settlement, mortgage, or otherwise, so as to render substitution difficult, an indorsement can be made on the policy securing the full responsibility and guarantee of the Albert and Medical Life Assurance Company for the fulfilment of the existing contract.

The business of the Albert Company began in 1838. Four bonuses have been declared varying from 25 to 50 per cent. on the premium paid. The next estimate of profits will take place at the end of 1861, and future estimates every succeeding three years after that time; and all Medical bonus policies will be entitled to participate in the bonus of 1861, being two years earlier than a bonus could have been declared by the Medical Society under its deed of settlement.

By the combination of the business of the two companies a very considerable saving in the expenses of management will be secured, which must materially increase the bonus-giving power of the amalgamated company, and thus afford improved prospects to the assured.

At two numerously attended meetings of the proprietors of this society (many of whom are large policy-holders) it was unanimously considered that the arrangements were advantageous to the assured both as regards security and future expectation of benefit; and the directors believe that the acceptance of policies in the amalgamated company will substantially promote the interests of the policy-holders.

It may be satisfactory to add that Dr. Farr, who is a policy-holder to a large amount, and who has been consulted, and has advised upon the amalgamation, fully concurs in this opinion.

I am, Sir,

Your obedient servant,

C. DOUGLAS SINGER,

Secretary.

M.

FAMILY ENDOWMENT: AGREEMENT FOR AMALGAMATION.

ARTICLES OF AGREEMENT made the 5th day of February 1861 between John Fuller of Joseph Walker Jasper Ouseley of and Jasper Wilson Johns of three of the directors of the Family Endowment Society (hereinafter called the society) and acting on behalf of the said Society of the one part and William Beattie of James Croudace of and George Raymond of three of the directors of the Albert and Medical Life Assurance Company (hereinafter called the company) and acting on behalf of the said company of the other part:

Whereas the said society and company respectively carry on the business of life assurance in the United Kingdom and have also respectively agencies in various parts of the East Indies :

And whereas the company lately made a proposal to the society that the said society should dissolve and consequent on such dissolution should transfer to the company upon the terms and in manner hereinafter expressed all the assets and liabilities of the society :

And whereas such proposal was considered by the directors of the society And it was resolved that the question of the dissolution of the society and of the acceptance in that event of the proposal of the company should be submitted to the consideration of the proprietors in the society at extraordinary general meetings to be for that purpose convened in accordance with the provisions of the deed of settlement of the society :

And whereas as regards the society these presents are intended to be provisional and to take effect only in the event of the said dissolution being resolved on in manner by the deed of settlement of the society provided and of the said arrangement being adopted by the said proprietors :

And whereas by resolutions of their respective boards of directors the respective parties hereto have been authorized on behalf of the society and company to execute these presents And it is intended and hath been resolved by the board of directors of the society that extraordinary general meetings of the said proprietors shall be forthwith convened for the purpose of considering the expediency of dissolution and (if such dissolution be resolved upon) of adopting the present agreement :

NOW THEREFORE IT IS AGREED between the parties hereto as follows:—

1. The business of the society shall as from the 1st day of January 1861 be and be deemed to have been transferred to and vested in the company.

2. All the moneys (including debts or balances due or coming to the society from agents or otherwise) and all other property credits securities and effects of the society shall as from the said 1st day of January 1861 become and be deemed

FAMILY ENDOWMENT: AGREEMENT FOR AMALGAMATION. lrv

to have become the property of the company and as soon as conveniently can be and circumstances will permit shall be transferred to and be vested in the company or their trustees.

3. All the debts engagements liabilities and risks of the society or of the present or any other trustees of the society or any of them as such trustees or trustee or of the board of directors of the society or of any officers thereof on behalf of the society existing or in force up to or on the said 1st day of January 1861 or thereafter arising or resulting from or out of any act of the society or of such trustees trustee or board of directors on account thereof and all claims and demands against the society or the trustees thereof or any of them as such trustees or trustee or against any director of or shareholder in the society in respect of any act transaction or omission of the society or of the board of directors thereof whether now known or communicated to the company or not and from whatever cause the same may arise (except wilful fraud on the part of the society their directors or officers) shall be wholly paid performed undertaken and met by the company and the company shall at all times save harmless and keep indemnified the society and the trustees and directors and shareholders from and against the same and from and against all actions suits and proceedings in respect thereof and all costs and charges connected therewith.

[4. Agreement with Empire Company.]

5. All premiums and other sums of money after the said 1st day of January 1861 paid or payable upon or in respect of policies of assurance or upon or in respect of endowments grants or engagements of the society in force on that day shall belong to and be the property of the company and all risks engagements and liabilities upon or in respect of all such policies endowments grants or engagements and also all charges and expenses connected therewith shall be borne and paid and satisfied by and out of the funds of the company.

6. The society and the company shall respectively use their best endeavours to procure the several persons holding or entitled to policies endowments grants deeds of covenant or other engagements of the society or of the said Empire Assurance Company to accept in exchange or in renewal policies endowments grants deeds of covenant or engagements of the company and the company will at their own expense on the application of the persons interested therein respectively grant execute and deliver such substituted or renewed policies endowments grants deeds of covenant or engagements to the several persons willing to accept the same.

7. The holders of all such policies of assurance in the society as would be entitled to participate in the profits of the society (and who shall accept in exchange policies of the company or otherwise concur in accepting the engagements of the company) shall be entitled to participate in the profits of the company at the valuation and division of profits of the company to take place immediately after this current year and in every succeeding division of profits upon the same scale and at the same rate as if such substituted policies respectively had been policies granted by the company on the day on which they respectively bear date.

8. All the books papers and documents of the society shall as from the said 1st day of January 1861 become the property of the company and shall be delivered over to the company accordingly.

9. The society their board of directors and officers will afford all reasonable and proper information and aid to the company.

[10. Office.]

11. The company shall at the expiration of six calendar months from the day on which the second special general meeting of the proprietors of the society shall be held for the purpose of confirming the present agreement or in case such meeting shall be adjourned then from the day of such adjourned meeting pay to each of the shareholders in the society by way of satisfaction and in extinction of his share or shares in the capital of the society the sum of £4 for every share to which he is entitled according to the register of shareholders of the society (being the amount per share which has been paid up by such shareholders) together with interest at five per cent. per annum payable in manner following (that is to say) one-half year's interest to be paid on the 1st day of July now next ensuing and interest for the number of days which shall elapse between the said 1st day of July and the day of the expiration of the said six calendar months to be paid on that day and such payment shall be made at the office of the company in Waterloo Place or elsewhere in London as the company shall appoint and the company shall send by post to each shareholder according to his address in the said register not less than seven days' previous notice in writing of the place and time of such payments.

12. That the actuary and secretary of the society shall go over to and continue with the company as the actuary and secretary of the Indian Branch of the business of the company upon the present terms and at the present rate of remuneration but in the event of his services not being required by the company he shall be compensated by the company.

13. That such two of the directors of the society as the board of directors shall in that behalf nominate shall when duly qualified for that purpose according to the company's deed of settlement become directors of the company.

14. That such of the clerks at the head office of the society as the company may require shall go over to and continue with the company at their respective present salaries.

15. That the company shall compensate and indemnify the existing officers of the society in respect of the determination of their respective offices and appointments under the society in manner following that is to say they shall pay to each director (except the directors who shall become directors of the company) the sum of £250 and to the chairman of the board of directors an additional sum of £100 and to the deputy chairman an additional sum of £50 To each of the three ordinary members of the Indian Committee the sum of £100 and to the chairman thereof the sum of £500 or as he shall elect an annuity of £100 for his life payable half-yearly. To each of the three members of the finance committee the sum of £50. To each clerk (except such as shall be required by the company to go over to and continue with the company) if on the said 1st day of January 1861 he had been in the service of the society for less than five years one year's salary but if for more than five but less than seven years one and a half year's salary if for more than seven but less than ten years two years' salary and if more than ten years then in addition to such two years' salary such further amount as the board of directors of the company shall think fair and proper. To the chief medical adviser the sum of £250 and to each of the two West End medical referees the sum of £50

FAMILY ENDOWMENT: AGREEMENT FOR AMALGAMATION. lxvii

To each of the two auditors the sum of £25 and to the late superintendent of agents the sum of £100 and to the society's messenger the amount of one year's wages and with respect to the solicitor of the society he shall continue to act as such in relation to the said transfer to the company of all the at present subsisting investments of the society and also for the purpose of winding-up the affairs of the society and the company shall employ him as their solicitor in relation to all the at present subsisting investments of the society after the same shall be transferred to the company and that in all business to be hereafter introduced by him direct to the company he shall act as their solicitor And further that he shall be paid the sum of £3000 as compensation for such loss as he may sustain in respect of the proposed transfer of the business of the society to the company and the company shall as to all and every the principal sums of money to become payable by them by way of compensation or indemnity as aforesaid pay and make good the same respectively at the expiration of six calendar months from the day on which the said second special general meeting of the proprietors of the society shall be held for the purpose of confirming the present agreement or in case such meeting shall be adjourned then from the day of such adjourned meeting.

[16. India.

17. Arbitration.

18. Meeting for confirmation.

19. Provisional conduct of business.

20. Costs.]

In witness &c.

N.

FAMILY ENDOWMENT: CIRCULAR ON AMALGAMATION.

FAMILY ENDOWMENT LIFE ASSURANCE AND ANNUITY SOCIETY,
42, New Bridge Street, London, E.C.
March 16th, 1861.

SIR,—I am instructed by the directors of this society to inform you that special general meetings, duly convened in accordance with the society's deed of settlement, and numerous attended, having, pursuant to the power contained therein, resolved unanimously to dissolve this society, and having further resolved unanimously to combine the business with that of the Albert and Medical Life Assurance Company, the affairs of the two will henceforth be carried on under the title of the Albert Medical and Family Endowment Life Assurance Company, a prospectus of which I herewith enclose.

In making this announcement, it is right to inform you of the reasons which have led to the course adopted and the advantages thereby conferred upon the policy and contract holders of the society. Although many of the reasons will be evident upon consideration of the advantages obtained, and hereafter referred to, it may be here stated that the leading or chief cause of the arrangement made has been the claims arising through the mutiny in India, which claims (not having been compensated by the Government as was expected, for reasons which need not, however, be alluded to here, would, at least to some extent, have been done), have, notwithstanding the suspension of the Family Endowment Society's bonuses on their account in and from 1858, rendered it impossible to consider that a fair and legitimate bonus could be granted by the society at the end of the year, as expected by policy-holders, and doubtful whether one could be declared for some time to come. This being the case, the directors, alive to the position of the society, and bearing in mind the expectations of assurers in regard to profits, became fully impressed with the importance and advantages of such a course as that which has been adopted; and, after anxious consideration and negotiation, succeeded in perfecting the arrangements made under which they have secured the following important advantages for the policy and contract holders of the Family Endowment Society.

First. The Albert Medical and Family Endowment Life Assurance Company have agreed, upon payment to them of the premiums payable under the policies or contracts of the Family Endowment Society, to undertake the liabilities and engagements of those contracts.

Second. The future security of the policy-holders will be that of a highly respectable and powerful company, whose position, income, and progress are such as to render it proof against fluctuations which might seriously affect a less important institution.

FAMILY ENDOWMENT: CIRCULAR ON AMALGAMATION. lxix

The position, income, and progress of the Albert Medical and Family Endowment Life Assurance Company are as follow :—

The accumulated assets exceed	£650,000
The subscribed capital	500,000
The paid-up capital	145,000
The annual income from life premiums alone exceeds .	250,000
The policy claims and bonuses paid amount to about .	1,000,000
And the new business is progressing at the rate per annum of about	30,000

Third. The capital of £500,000, referred to in the preceding, is practically rendered secure by being subscribed for by responsible and influential shareholders six to seven times as numerous as those of the Family Endowment Society.

Fourth. In consideration of the great saving of expenses and other advantages likely to arise out of the combination of the businesses of the two societies it has been agreed and arranged that the with-profit life assurance policy-holders of the Family Endowment Society shall participate in the profits of the combined company "upon the same scale" as if their policies had been policies granted by the combined company "on the day on which they respectively bear date." In regard to the above excellent arrangement for policy-holders, it may be stated that it is proposed to declare the next bonus after the expiration of the current year, at, in fact, the exact period which but for non-compensated losses occasioned by the mutiny, a bonus would, in all probability, have been declared by the Family Endowment Society ; and it must not be overlooked that the participating policies are to rank as though they had been original policies.

It may be further stated that the Albert and Medical Company, established in 1838, has declared several bonuses which will compare well with those declared by other offices, and varying from 25 to 50 per cent. on the premiums paid.

Fifth.—The material part of the expenses of management of the Family Endowment Society which, as intimated in the preceding paragraph, will be saved, must increase the future profits of the combined company, and thereby afford improved bonuses to the assured.

In conclusion, I may add that it will not be necessary in any way to disturb the existing policies and contracts of the Family Endowment Society, but should any policy or contract-holder particularly desire it, an endorsement of the admission of the liability of the Albert Medical and Family Endowment Life Assurance Company can be put upon the policy ; or, a new policy issued in exchange upon the terms and conditions of the old policy. Policies sent to me at this office to be so indorsed or exchanged will be acknowledged, and will be duly attended to as soon as circumstances will allow.

I am, Sir,

Your obedient servant,

EDWIN H. GALSWORTHY,
Actuary and Secretary.

In the case of annuity contract-holders the following was added :

P.S.—As an annuity contract-holder of the Family Endowment Society, I have to call your attention to advantages you derive under the paragraphs on the preceding page commencing first, second, and third. I have also to call your attention to the concluding paragraph, and to inform you that annuities payable under contracts issued by the Family Endowment Society will henceforth be payable and paid by the Albert Medical and Family Endowment Life Assurance Company, at, until further notice, this office, 42, New Bridge Street, as hitherto.

E. H. G.

O.

WESTERN : AGREEMENT FOR AMALGAMATION.

AN AGREEMENT made and entered into this 14th day of June 1865 between Peter Hood Edward Vansittart Neale and Henry Edgeworth Bicknell three of the directors of the Western Manchester and London Life Assurance Society a society established by deed of settlement dated the 1st of July 1842 and supplemental deeds thereto (hereinafter called the said Society) of the one part and William Page Thomas Phillips and Robert Whitworth and George Goldsmith Kirby three of the directors of the Albert Life Assurance Company a company established by deed of settlement dated the and supplemental deeds thereto (hereinafter called the said company) of the other part :

Whereas the board of directors of the said society and company respectively have resolved that an amalgamation of the said society with and transfer of its business and liabilities and assets to the said company is desirable and it has been deemed expedient that a provisional agreement for such amalgamation and transfer should be entered into for the purpose of determining the terms upon which the said society shall transfer its business and liabilities and assets to the said company if it be found that the said society and company have power to carry into effect such amalgamation and transfer or can obtain such power without having recourse to parliament :

And whereas the directors of the said society in extraordinary board assembled by a resolution dated the 13th day of June 1865 have recommended the dissolution of the said society in order to carry into effect such amalgamation and transfer in accordance with the deed of settlement of the said society :

NOW IT IS HEREBY AGREED AND DECLARED between the parties hereto on behalf of the said society and company respectively :

1. The directors of the said society shall as soon as practicable after the execution of this agreement convene two extraordinary general meetings of the society in conformity with the provisions of the deed of settlement thereof for the purpose of dissolving the said society.

2. Upon the confirmation by such second extraordinary general meeting of a resolution for dissolving the said society and in consideration of the transfer of funds and property to be made to them as next hereinafter is provided the said company shall pay and satisfy all claims and demands upon the said society arising from assurances annuities and other contracts and engagements when and as the times for the payment and satisfaction of the same successively arrive and shall take upon itself all other the liabilities of every description of the said society.

3. In consideration of such undertaking as last aforesaid and of the provisions hereinafter contained respecting the policies of the said society and the several other conditions herein contained the said society shall as soon as is practicable.

after the passing of such second resolution transfer to the said company all the funds and property of the said society of whatever kind they may be good bad or doubtful together with the right to receive all premiums that may become payable in respect of all the then existing policies either issued by the said society or the liabilities under, which have been undertaken by the said society and all other amounts due and payable or to become due and payable to the said society it being agreed that the said company shall take upon itself all risk and loss attending the realization of the assets of the said society such assets having been examined and approved previous to the execution of this agreement by the accountant of the said company on its behalf.

4. The said company shall give to all policy-holders in the said society whose policies are in existence at the period of its dissolution the same present and future facilities privileges and benefits in every respect as if they had been effected with the said company and shall in every case where the said society has entered into any special contract with the holder of any such policy observe the same in like manner as the said society would be bound to do if such dissolution had not taken place except as to future bonus in respect of policies becoming claims before the 31st day of December 1866.

5. On policies in the said society on the participating scale which become claims before the next valuation of the profits of the said company as at the 31st day of December 1866 the claimants shall be entitled to a bonus of ten per cent. on the premiums which have been paid during the last five years ending the 31st day of December 1864 in addition to the sum assured and to all bonuses previously added to such policies by the said society At the next and all future divisions of profit by the said company the policy-holders in the said society on the participating scale shall participate rateably in the same manner as if their policies had been originally taken out in the said company.

6. The books accounts papers vouchers and documents of the said society shall be handed over to the said company who shall hold the same for the purpose of carrying on the business but the same shall at all convenient times during the winding-up of the said society be open to the inspection of the managers of the winding-up referred to in Article 10.

7. The agencies connections and goodwill of the said society shall become the property of the said company and in consideration thereof the said company shall grant to every holder of shares in the said society (such shares amounting in the aggregate to \$4519 or thereabouts) one share of £20 in the said company upon which £10 shall be deemed to have been paid for every ten shares held by him in the said society and shall also pay to every shareholder therein the sum of 4s. 6d. for every share held by him in the said society by three equal half-yearly instalments secured by acknowledgments in writing from the said company with interest at five per cent. per annum the first thereof to become due and be paid on the 1st day of July 1866 Where any shareholder in the said society holds any number of shares not divisible by ten without leaving a remainder then the fractional number left over shall be dealt with as the board of the company in each case determine.

8. The shares of the said company issued to shareholders in the said society shall bear interest by way of dividend at the rate of five per cent. per annum so long as the other shares in the said company bear a dividend or bonus of not less than

five per cent. and not exceeding six and a-half per cent. per annum. And in case in any year the rate per cent. of dividend or bonus declared on the present shares in the said company other than those issued to shareholders in the said society in pursuance of this agreement is increased beyond six and a-half per cent. the dividend paid on the shares so issued shall be equally increased beyond the five per cent. aforesaid.

9. Within three weeks after such confirmation as aforesaid of the resolution for dissolving the said society the board of directors of the said company shall nominate four of the directors of the said society to be appointed directors of the said company and four others of the directors of the said society to be elected trustees of the said company and within three months after such date shall cause such appointments and elections to be completed and if any person so appointed a director holds less than 500 shares in the said society the sum paid upon the shares allotted to him may be diminished as he directs so that he hold such qualification as is required by the deed of the said company.

10. The persons so nominated as directors shall act as managers of the winding-up of the said society under the direction of the board of the said company such four directors receiving the same fees from the date of the dissolution as if they were directors of the said company from that time until they shall be elected or appointed directors of the said company.

11. The persons so elected as trustees shall receive while holding office fees of fifty guineas a year each payable at the end of each year counted from the date of the dissolution subject to their holding and continuing to hold the shares in the said company to be allotted to them as shareholders in the said society under this agreement.

12. The directors of the said society who shall retire not exceeding six in number shall be entitled to receive from the said company at the end of six months from the date of the dissolution three years' fees at the rate of one hundred guineas each per annum.

13. George Henry Drew esquire one of the directors of the said society shall be appointed one of the solicitors of the said company.

14. Messrs. Cocks Biddulph & Co. the bankers of the said society shall be appointed one of the bankers to the said company.

15. Messrs. Lethbridge and Mackrell solicitors to the said society shall receive three hundred and sixty pounds on their resigning such office and entering into an undertaking with the said company not only not to act for any other life assurance society for twelve months but to give their friendly assistance in perfecting the amalgamation and in keeping up the policies of their clients.

16. Dr. Basham medical officer of the said society in London and Mr. Leigh at Manchester shall be retained as medical officers of the said company at their present salaries.

17. Such compensation as the united board may determine shall be given to the clerks and officials of the head and Manchester branch of the said society unless they are retained and their salaries shall be paid by the said company until their appointments are terminated by the united board.

18. The board of directors of the said society will at the request and cost of the said company execute all deeds and do all acts that may be necessary or that counsel may advise (except applying for a special Act of Parliament) for more

effectually vesting in the said company or its trustees all the funds and property connections agencies and goodwill of the said society and the said company will at the request of the directors of the said society but at its own cost execute all deeds and do all acts that may be necessary or that counsel may advise (except applying for a special Act of Parliament) for more effectually undertaking the liabilities of the said society and releasing the said society therefrom.

19. In case of any question or difference arising between the company and the society as to this agreement or any matter connected therewith it shall be referred to arbitration in the usual way and the provisions of the Common Law Procedure Acts as to references arbitrations and awards shall extend and apply to any such reference in the same manner as if those provisions had been repeated in this agreement.

20. This agreement shall be null and void if the proprietors of the said society do not confirm the resolution for its dissolution within three months from the date hereof.

In witness &c.

P.

WESTERN: CIRCULAR ON AMALGAMATION.

WESTERN, MANCHESTER, AND LONDON LIFE ASSURANCE SOCIETY,

3, *Parliament Street, S.W., London,*

14th July, 1865.

DEAR SIR,—I beg to inform you that the directors of this society, acting under the powers conferred by the deed of settlement, and with the unanimous concurrence of the shareholders, have incorporated the business of the Western, Manchester, and London Life Assurance Society with that of the Albert Life Assurance Company, established 1838.

This step has been taken under the advice of Professor Sylvester, F.R.S. (formerly actuary to the Equity and Law Life Assurance and Law Reversionary Interest Societies), in which the actuary of the society, Mr. Scratchley, has concurred.

The objects of the directors have been

First. To increase the protection of policy-holders from aberrations in the law of mortality, which unavoidably attend the operations of comparatively small assurance societies.

Second. To increase the funds available for divisions of profit by diminishing the relative expenditure necessary for the conduct of the offices separately.

The annual premium income of the united society is over £300,000, exclusive of the new business, which is being transacted at the rate of £30,000 a year. A large portion of the business is of very recent origin, policies producing over £130,000 in new annual premiums having been issued during the last three years.

The proprietary capital is large, and is subscribed by nearly 600 shareholders. The directors have decided to declare no bonus in connection with the valuation of the liabilities and assets of this society to the 31st December, 1864; but it has been arranged,

First. That at the next division of profits of the Albert Company (a valuation for which will take place in 1867), and at all future divisions, the Western profit policy-holders shall participate rateably, in the same manner as if their policies had been originally taken out in the Albert. (At the division of profits of the Albert Company in 1862 a bonus of £50,000 was authorized by Professor De Morgan as available for allotment.)

Second. That in the event of any Western profit policy becoming a claim previously to the valuation in 1867, a guaranteed bonus of 10 per cent. on the premiums paid on the policy during the last five years shall be

added to the amount of the policy, and paid in addition to all bonuses previously declared thereon.

Third. That the Albert shall give to all existing Western policy-holders the same present and future facilities, privileges, and benefits in every respect as if their policies had been effected with the Albert.

Eight of the directors of the Western will take part in the management of the united society, four as trustees and four as directors. Mr. Scratchley will become the actuary of the united society.

Should you desire to increase your policy, or should any of your friends be contemplating effecting assurances, the actuary will be happy to give you every information and supply you with the necessary forms.

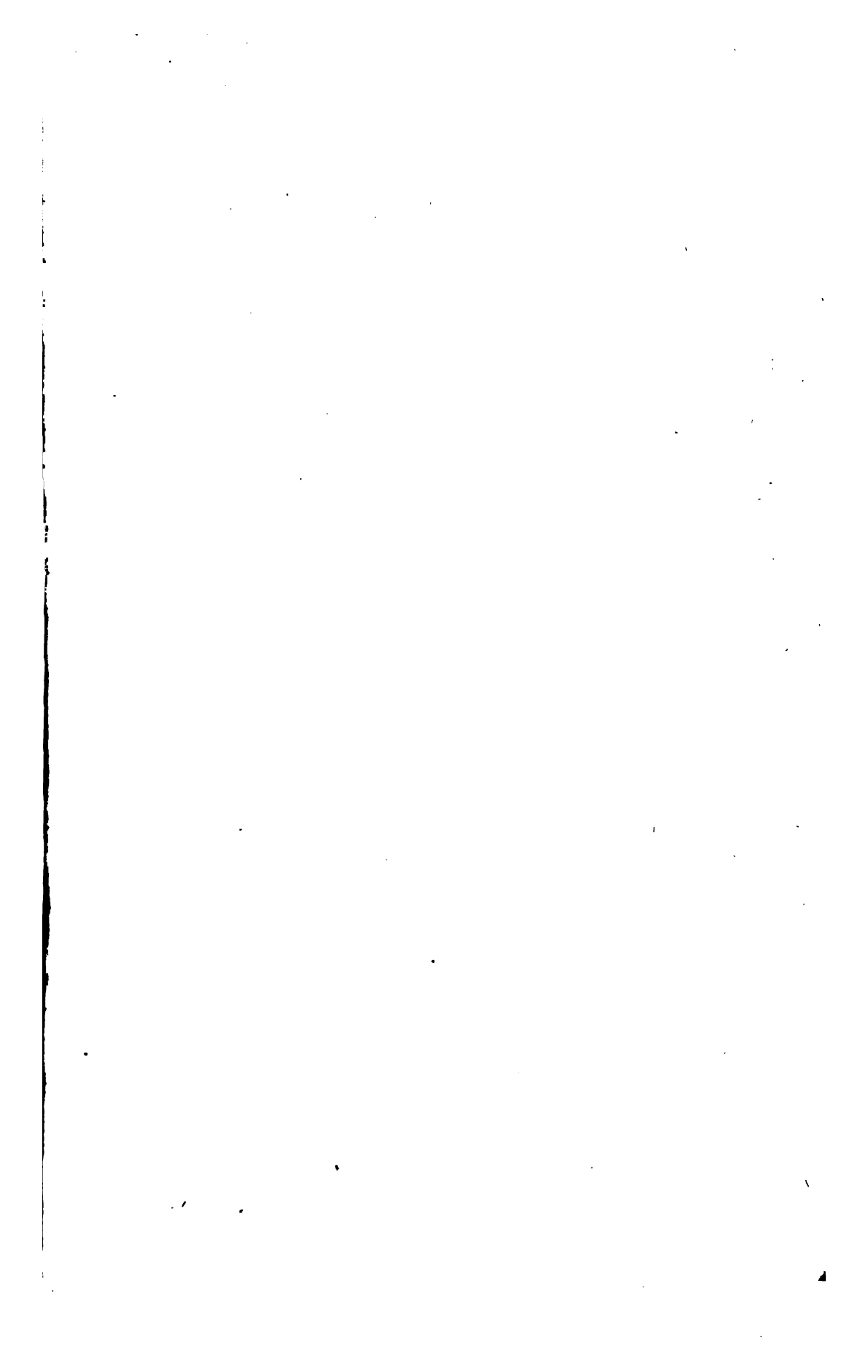
We are, dear Sir,

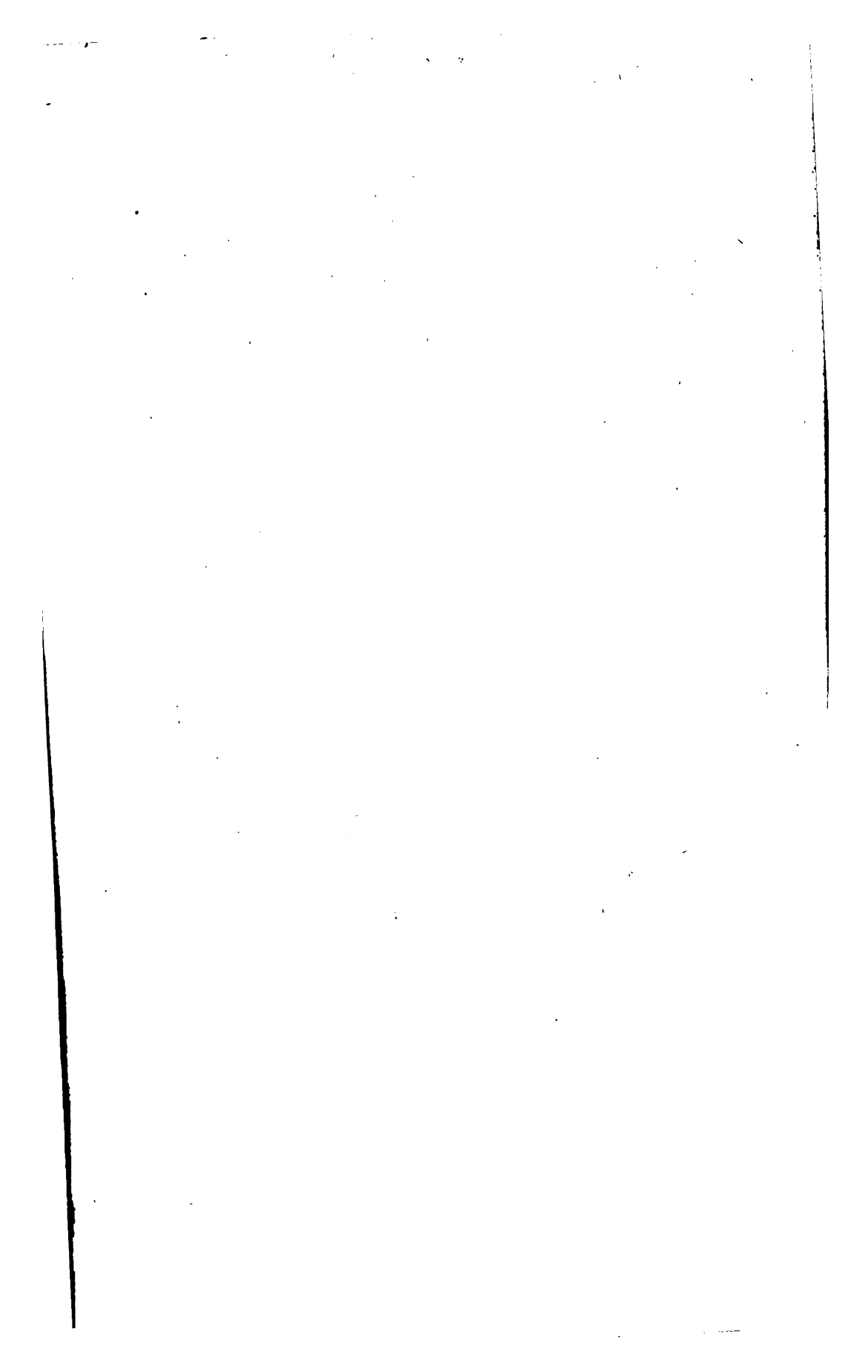
Yours faithfully,

JOHN TOMLINSON HIBBERT, CHAIRMAN.

HENRY EDGEWORTH BICKNELL, DEPUTY-CHAIRMAN.

ARTHUR SCRATCHLEY, M.A., ACTUARY.







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Albert arbitration.

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